

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF AND APPENDIX FOR APPELLANT.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1948

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA
980
2042

No. 8324.

MILTON G. CARVER, APPELLANT,
VS.

WALTER C. CLEPHANE, AS CHAIRMAN AND MEMBER
OF THE COMMITTEE ON ADMISSIONS AND GRIEV-
ANCES, DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA, AND OTHER
MEMBERS OF THE COMMITTEE, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

JAMES J. LAUGHLIN,
National Press Building,
Washington, D. C.,
Counsel for Appellant.

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LASKEY, EDWARD STAFFORD, VERNON E. WEST,
CHARLES F. WILSON, EDMUND L. JONES, ANDREW
B. DUVALL, AUSTIN F. CANFIELD, AS MEMBERS
OF SAID COMMITTEE, APPELLEES.**

BRIEF ON BEHALF OF APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal from an order of District Court dismissing complaint to compel certification of name of appellant to the court for admission to the bar of District Court. The jurisdiction of District Court to entertain the suit is founded on Title 11, Sec. 312, D. C. Code (1940 Ed.), 32 Stat. 522, Ch. 1329. The jurisdiction of this Court to entertain the appeal is founded on Title 17, Sec. 101, D. C. Code (1940 Ed.), 27 Stat. 435, Ch. 74, Sec. 74.

STATUTE INVOLVED.

Sec. 101, Title 17, D. C. Code (1940 Ed.), insofar as it is applicable here provides:

"The general term of said court * * * may admit persons to the bar of said court and censure, suspend or expel them. * * *"

RULES OF COURT INVOLVED.

Rule 93 of the Local Rules of District Court insofar as they are applicable to this case provide:

"Rule 93 (a). Applications for admission to the bar shall be made in writing addressed to the court in general term, and, without further order of the court, shall be referred by the clerk to a standing committee of nine members of the bar to be known as the Committee on Admissions and Grievances, to be appointed by the court. * * *"

"Rule 93 (b). No student shall be admitted until after an examination as to fitness and proof of good moral character and that he has studied diligently at least three academic years in a law school approved by the court or by the Committee on Admissions and Grievances, or three years under the personal direction and supervision of some competent authority. * * *"

"Rule 93 (i). No applicant shall be admitted until the committee shall have caused an exhaustive examination to be made by an appropriate agency as to his character and a favorable report made by the committee; and the applicant shall in addition have an endorsement as to his good character from some member of the bar of this court engaged in active practice therein. The committee may give such notice of the application by advertisement in a newspaper or posting of the same in the courthouse for a designated time, or both, as the committee may deem proper."

STATEMENT OF THE CASE.

During the month of December, 1938, appellant passed the required examination for admission to the bar and this is conceded by the appellees (Record 8). The appellant contends at all times that he submitted evidence of good character that was clear and convincing but was denied admission by the appellees on the ground "that the plaintiff is lacking in that 'good moral character' which should be passed by members of the bar" (Record 16). Appellant contends in this appeal that the action of the appellees in denying him admission for the reasons, presently stated, was arbitrary, illegal and tyrannical. It is also urged that the action of District Court in delegating such broad powers to a committee of lawyers is without warrant in law and the methods of the committee in admitting and excluding attorneys is inimical to the best interests of the administration of justice. The action of the committee in denying admission to appellant was on the ground that he had been excluded practice before the United States Patent office and that a judgment had been obtained against him in Municipal Court. The latter ground it is submitted should fall of its own weight. As to the former it must be pointed out that appellant had never been admitted to practice before the Patent Office so there is no question as to suspension or disbarment before the Patent Office. The action of the Patent Office was based on three letters written by the appellant to an attorney at law in El Campo, Texas, and so that this Court may have them in full they are printed in the appendix at Pages_____ Also see Record 143 to 149. Appellant after failing to get a favorable report before the Committee on Admis-

sions and Grievances appealed to District Court by filing a complaint entitled "Complaint Against Committee on Admissions and Grievances to Compel Certificate of Name of plaintiff to Court for Admission to Bar of this Court" (Record 1-6). There was no testimony taken in open court before a court of three judges and on March 23, 1942, his petition was dismissed, the court holding "the applicant, both at his hearing before the Committee on Admissions and Grievances, and in open court in the present proceedings, has failed to establish such qualifications as to character as to warrant his admission *at this time*" (italics ours) (Record 26). In the order dismissing complaint the court held "the plaintiff * * * had failed to establish such qualifications as to character as to warrant his admission at this time to the bar of the court. * * *" (Record 30).

STATEMENT OF POINTS.

In this appeal appellant relies on these points:

Appellant was denied a legal hearing.

The action of the Committee on Admissions and Grievances was illegal, arbitrary and tyrannical.

The court erred in not requiring testimony and valid evidence before denying appellant admission to practice.

The lower court has erred in delegating to a committee of lawyers a function belonging exclusively to the court.

SUMMARY OF ARGUMENT.

No person can be denied a right without due process of law and due process presupposes a hearing legal in all respects.

When an applicant for admission to the bar passes a mental examination as required by the rules of the court and presents evidence of good character certified to by practicing attorneys and there is nothing in his private or official life that shows dishonesty or immorality he cannot be rejected.

When an applicant submits to an examination before a committee on admissions and grievances such hearing should be conducted in a judicial manner—with fairness and justice and impartiality.

What is character?

What is good character?

What is good moral character?

Who is spotless?

Who is blameless?

Who is above suspicion?

Must all applicants for admission to the bar be saints?

ARGUMENT.

Appellant Was Denied Due Process of Law.

It is contended that appellant was denied a hearing as required by law. There was no testimony taken in open court and virtually the only "evidence" before the court was the hearing before the Committee on Admissions and Grievances. That is made a part of the record on appeal. It is submitted that such "evidence" does not satisfy the due process requirement. The hearing descended to the miasmatic depths of a police precinct third degree. There was no regard for the rules of evidence and the appellant was insulted and badgered throughout the four hour session. At the hearing before the court in general term there was no sworn testimony.

In *Hamrick v. Bryan*, 21 Fed. Supp. 392, the Court said:

"Due process requires that every person shall have protection of his day in court and opportunity to be heard."

In *People v. Niesman*, 190 N. E. 668, 356 Ill. 322, the Court said:

"Due process of law requires that every man shall have protection of his day in court and benefit of general law, which hears before it condemns, and proceeds, not arbitrarily but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under protection of general rules which govern society."

In *Corsicana Hotel Co. of Texas v. Kell*, 66 S. W. 2d 760, the Court said:

"Right to day in court, of notice and privilege of being heard before judgment is of essence of 'due process' and litigant aggrieved by violation thereof is entitled to review."

In *San Jose Ranch Co. v. San Jose Land and Water Co.*, 58 Pac. 824, 126 Calif. 322, the Court said:

"It is the right of every person before he can be deprived of his property to have a trial according to law, to have the same character of trial given by the same established rules of evidence and procedure as are applied in other cases under similar conditions."

Appellant Was Entitled to Admission.

It is submitted that appellant has done everything that he is required to do by law and by the rules of District Court. He passed the mental examination. In addition he submitted endorsements by members of the bar as to his character (Record 3). There has never been any contention that he was guilty of any offense nor was he shown guilty of any dishonesty. It is urged therefore that the Committee on Admissions and Grievances was biased and prejudiced against him and the action of that committee in recommending against him was arbitrary.

The contention was made by the committee that appellant had an unsatisfied judgment against him in Municipal Court. If that is to be a barrier it seems permissible to inquire that if the width and breadth of this land was canvassed as to members of bar who have or have had judgments against them then a terrific dent will be made into the bar membership. The record shows that appellant's explanation of this judgment is a logical and reasonable and just one and the action of the Committee in holding this to be an obstacle is capricious.

The Committee contended further that appellant should be denied admission due to his difficulty with the Patent Office. There is no showing of dishonesty in his dealings with the Patent Office. He had never been admitted to practice before the Patent Office. Hence there was no disbarment or suspension. It must be remembered that in trade mark cases one does not have to be an attorney. As far as the disciplinary action of the Patent Office can go is to refuse to recognize the power of attorney in that particular case. It must be kept in mind that anyone can make a patent search and a search is no part of a patent application.

In the case of appellant there is no gross misconduct. The most that can be said is that appellant made a mistake of judgment and perhaps was guilty of bad taste.

**Appellant Was Entitled to a Fair Hearing Before
Committee on Admissions and Grievances.**

The record discloses that appellant appeared before the Committee on Admissions and Grievances. He appeared for an examination into his qualifications and his fitness. He was entitled to a fair hearing. He had reason to believe that it would be conducted in a judicial manner. Instead it will be seen that he was subjected to a constant stream of abuse and ridicule. There was no regard for the rules of evidence. As an example: With nothing to the contrary before the Committee other than the testimony of appellant we find this (Record 86):

“Mr. Canfield: But it is important. He never heard of you, never knew of you, never heard of this

case until last week. That is what he said¹ * * * you offered him three dollars for it and raised hell because he wouldn't take it.² Now that is what he just told me."³

Then again (Record 97):

"Mr. Merrick: Then why was it necessary for you to tell the committee that he replied that Mr. Carver raised hell down there because he wouldn't take the \$3.

Mr. Canfield: I didn't say that he did."

That is taken from the transcript certified by the appellees as correct. Mr. Canfield said it according to the record. Then he said he didn't say it. However it is there in black and white.

It is apparent that the atmosphere was so charged with rancor and bitterness toward appellant that a just and fair hearing was out of the question.

With the situation as exists—as shown by the record—it was absolutely essential to due process that the District Court go into the matter—take testimony in open court—sworn and with regard to the rules of evidence. Had that been done it is difficult to see how appellant could have been denied admission.

Character.

If the present committee on Admissions and Grievances takes the view that it will never admit appellant—as long as the committee consists of its present personnel

¹We wonder what is meant by "that is what he said" when no one else had testified.

²That is rather forthright language for one sitting in a judicial capacity.

³It is permissible to inquire—who was it that "just told me."

then the court should come to his rescue. The matter is too vital. It is vital to appellant. It is just as vital to the general public. Has the situation reached the point that only saints can be admitted to the bar.

In *Boak v. State*, 5 Iowa (Clarke) 430, the Court said:

“Character is the actual qualities which belong to an individual.”

In *Smith v. State*, 7 So. 52, 88 Ala. 73, the Court said:

“Character is the estimation in the community in which a witness is held.”

In *Glover v. State*, 76 So. 300, 200 Ala. 384, the Court said:

“ ‘Character’ when properly made the subject of inquiry in a court means the estimate in which the individual is generally held in the community in which he has resided.”

In *People ex rel. Chicago Bar Assn. v. Pace*, 188 N. E. 169, 354 Ill. 111, the Court said:

“ ‘Good moral character’ which is condition precedent to right to practice law includes honesty and frankness towards client, and is inconsistent with endeavor wrongfully to obtain client’s property.”

Conclusion.

It is urged that appellant is entitled to admission to the District bar and did everything that the law requires. We say therefore that the action of District Court in dismissing his complaint was error and should be reversed.

JAMES J. LAUGHLIN,
National Press Building,
Washington, D. C.,
Counsel for Appellant.

APPENDIX.

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IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Civil Action No. _____

Milton G. Carver, 1830 K St., N. W., Washington, D. C.,
Plaintiff, vs. Walter C. Clephane, Tower Building,
Washington, D. C., as Chairman and member of the Com-
mittee on Admissions and Grievances, District Court of
the United States for the District of Columbia; and

John E. Laskey, Albee Bldg., Washington, D. C.,

Edward Stafford, 1001 - 15th St., N. W., Washington,
D. C.,

1 Vernon E. West, 815 - 15th St., N. W., Washington,
D. C.,

Charles F. Wilson, American Security Bldg., Washing-
ton, D. C.,

Edmund L. Jones, Colorado Bldg., Washington, D. C.,

Andrew B. Duvall, 723 - 15th St., N. W., Washington,
D. C.,

Austin F. Canfield, Woodward Bldg., Washington,
D. C., and

Joseph A. Burkhart, Woodward Bldg., Washington,
D. C., as Members of said Committee on Admissions
and Grievances of the District Court of the United
States For the District of Columbia, Defendants.

**Complaint Against Committee on Admissions and Griev-
ances to Compel Certification of Name of Plaintiff to
Court for Admission to Bar of This Court.**

1. This Court has jurisdiction of this action by vir-
tue of the provisions of Section 51 and 52, Title 18, of
the Code of Laws for the District of Columbia, 1929 (Sec-
tions 65 and 218 old Code).

2. Heretofore, during the month of December, 1938,
plaintiff passed the required examination as to educational

qualifications prescribed by the defendants as the Committee on Admissions and Grievances of this Court, and thereafter submitted to said Committee competent, convincing, and conclusive written and oral evidence of his good moral character, and by such evidence proved to the said defendants that he is honest, has never committed a crime, has never been arrested for nor charged with the commission of any crime or misdemeanor involving moral turpitude, and has a good reputation with and amongst his neighbors, acquaintances, associates, and fellow employees in the service of the Government of the United States where he now is and for some time has been employed, and that he is fully equipped mentally, physi-

2 cally, educationally and morally for admission to the bar of this Court as an attorney at law, and further plaintiff duly filed with the said defendants two written petitions, one on February 16, 1940, and one on August 7, 1940, praying that defendants certify his name to this Court as being that of a person duly qualified for admission to the bar of this Court as an attorney at law, or, in the alternative, if defendants declined so to certify plaintiff's name to this Court, they submit his name, together with the record in his case, including his petitions filed with defendants as aforesaid, for the action of this Court thereon.

3. In his said petition, filed with defendants on February 16, 1940, as aforesaid, plaintiff pointed out and brought to the attention of defendants the fact that by virtue of Section 51, Title 18, of the Code of Laws for the District of Columbia, providing that

"Said Court (meaning the District Court of the United States for the District of Columbia) in general term * * * may admit persons to the bar of said Court * * *."

this Court is invested with the power of admitting members to its bar; that the exercise of such power constitutes the performance of a judicial function of this Court, which in law cannot be delegated to others but must be performed by the judges of this Court, and further that, under and in accordance with Rule 21 of the Simplified Rules of Procedure in Civil Practice promulgated by this Court, the defendants, as said Committee on Admissions and Grievances, are lacking in power and authority either to admit or deny admission to members of the bar of this Court, but are empowered only to examine candidates for admission and to require of them such evidence of good moral character as defendants shall deem proper.

4. Following the filing with said defendants on February 16, 1940, of the first written petition hereinabove referred to, said defendants, acting by and through the said defendant Walter C. Clephane as chairman, notified plaintiff, through his attorney, that defendants had set March 8, 1940, at 2 o'clock P. M., at the office of said chairman in the Investment Building, Washington, District of Columbia, as the time and place for a hearing on said petition, and that,

3 "I might add that Rule 21 relating to admission to the bar provides that no student shall be admitted until after an examination as to fitness and proof of good moral character, and that the Committee is authorized to require such proof of moral character as it may deem proper. It will therefore be incumbent upon Mr. Carver at the hearing fixed as above stated, to offer such proof in this regard as he may think entitles him to admission to the bar." (Underscoring added.)

Said defendants failed and neglected to apprise plaintiff of the nature of "such proof of moral character" as it

deemed proper, but on the contrary violated said Rule 21 by requiring plaintiff to offer such proof as "he may think entitles him to admission to the bar."

Acting upon said requirement of defendants, plaintiff submitted to defendants at said hearing sworn statements of George H. Schoolmeister, Roger O'Donnell, since deceased, M. Burtrem Crabill, M. D., and John R. Dull, M. D., all reputable citizens, certifying that plaintiff is of good moral character and has a good reputation, which were in addition to evidence of a similar nature theretofore submitted by plaintiff to defendants, and plaintiff further testified orally in effect that he had not been arrested for nor suspected of having committed any crime or misdemeanor involving moral turpitude, which proof he then thought and still thinks entitles him to admission to the bar of this Court on moral grounds, particularly since there was no contradiction thereof by the testimony of other witnesses or otherwise, to plaintiff's knowledge.

Without informing plaintiff during or at the conclusion of said hearing as to whether said evidence of moral character was deemed by defendants to be sufficient or insufficient, said defendants, on March 9, 1940, through the said chairman, advised plaintiff by letter to his attorney that

"I am instructed by the Committee on Examinations and Grievances of the District Court of the United States for the District of Columbia to inform you that it cannot see its way clear to recommend the admission to the bar of Mr. Milton G. Carver." (Underscoring added.)

5. Thereafter, on August 7, 1940, plaintiff, as aforesaid, filed another petition with said defendants, furnishing further evidence as to his moral qualifications, and

praying, among other things, that his name be certified by defendants to this Court for admission to the bar, or, in the alternative, if defendants adhered to their former decision, that they specify distinctly and clearly in writing the reasons for their action and wherein plaintiff is

4 deficient in moral character to such an extent as not to be entitled to admission to the bar on that ground, and also that, as aforesaid, his name and the record in his case be certified to this Court for its action thereon. Thereafter, under date of September 30, 1940, the defendants notified plaintiff by letter addressed to his attorney, as follows:

"The Committee on Admissions and Grievances at its meeting gave full consideration to the petition submitted by you on behalf of Mr. Milton G. Carver that this Committee certify his name to the District Court for admission to its bar.

"You will recall that Mr. Carver has already had two full hearings before the Committee. Inasmuch as the first hearing was had in the absence of counsel or of any request therefore, when you, on his behalf submitted an application for a rehearing, the rehearing was gladly granted.

"You will also recall that both you and he were present at the rehearing and heard the testimony taken and the opinion of the Committee announced to the effect that the proof submitted by Mr. Carver as to his moral character was not, in the opinion of the Committee, sufficient to justify the Committee in recommending him for admission to the bar. At that time it was announced that the Committee could see its way clear to certify his name for admission. The Committee, after consideration of the evidence submitted by you, does not see its way clear to depart from its former conclusion.

"It has never been the practice of this Committee to certify to the District Court the names of unsuccessful applicants for admission to its bar and we see no reason to depart from the established practice.

The Committee will, of course, if directed so to do by the Court submit any written material which it has in its possession regarding Mr. Carver."

The third paragraph of said letter is not in accordance with the facts, for the reason that neither during nor at the conclusion of the hearing referred to therein, did defendants, as said Committee, make any announcement of their decision, but, on the contrary, as hereinbefore shown, notice to plaintiff and his counsel was withheld and made by a letter, dated March 9, 1940, wherein it was stated that defendants could not see their way clear to recommened the admission of plaintiff to the bar of this Court, without giving any reasons for having reached that decision.

6. Notwithstanding plaintiff's qualifications for admission to the bar of this Court and his compliance with the requirements of defendants in all respects and with the rules of this Court, as hereinbefore shown, the said defendants have refused and now so refuse, unlawfully, arbitrarily, capriciously and unjustly, to certify plaintiff's name to this Honorable Court for admission to the bar, or to certify and transmit to this Court the record in his case pertaining to his moral and educational qualifications for its action thereon, but on the contrary side defendants unlawfully have usurped the functions and prerogatives of this Court and are assuming to deny admission of plaintiff to the bar of this Court, contrary to and in violation of the statute in such case made and provided.

Wherefore, plaintiff prays judgment as follows:

1. That he be admitted to the bar of this Court as an attorney at law.

2. That defendants and each of them as members of said Committee on Admissions and Grievances of this Court be commanded to certify the name of plaintiff to this Court as being that of a person fully qualified, educationally, physically, mentally and morally, for admission to the bar of this Court.

3. That, in the alternative, defendants be commanded to certify to this Court the fact that plaintiff passed the educational examination prescribed by defendants for admission to the bar of this Court, and to forward to this Court, for its consideration and action, all records, evidence, and papers filed with and adduced before defendants as such Committee relative to the moral character of plaintiff and his moral qualifications for admission to the bar of this Court, and that, acting thereon, this Court admit plaintiff to its bar as an attorney at law.

4. That plaintiff have such other and further relief as to the Court may be deemed just and proper.

Milton G. Carver,
Plaintiff.

Richard L. Merrick,
913 Woodward Bldg.,
Washington, D. C.,
Attorney for Plaintiff.

District of Columbia, ss:

Milton G. Carver, being first duly sworn according to law on oath deposes and says that he has read the
6 foregoing complaint by him subscribed, and knows the contents thereof; and that the facts therein stated as of personal knowledge are true, and those therein stated upon information and belief, he believes to be true.

Milton G. Carver.

Subscribed and sworn to before me this ____ day of October, 1940.

Notary Public, D. C.

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 8731.

Milton G. Craver, 1830 K St., N. W., Washington, D. C.,
Plaintiff, vs. Walter C. Clephane, Tower Building,
Washington, D. C., as Chairman and member of the Com-
mittee on Admissions and Grievances, District Court
of the United States for the District of Columbia; and

John E. Laskey, Albee Bldg., Washington, D. C.,

7 Edward Stafford, 1001 - 15th St., N. W., Washington,
D. C.,

Vernon E. West, 815 - 15th St., N. W., Washington, D. C.,

Charles F. Wilson, American Security Bldg., Washing-
ton, D. C.,

Edmund L. Jones, Colorado Bldg., Washington, D. C.,

Andrew B. Duvall, 723 - 15th St., N. W., Washington,
D. C.,

Austin F. Canfield, Woodward Bldg., Washington,
D. C., and

Joseph A. Burkhart, Woodward Bldg., Washington,
D. C., as Members of said Committee on Admissions
and Grievances of the District Court of the United
States for the District of Columbia, Defendants.

**Answer of Committee on Admissions and Grievances to
Complaint to Compel Certification of Name of Plain-
tiff to Court for Admission to Bar of This Court.**

1. Defendants admit the allegations contained in
paragraph 1 of the complaint.

2. The defendants admit that during the month of
December, 1938, plaintiff passed the required examination
as to educational qualifications prescribed by defendants
as the Committee on Admissions and Grievances of this
Court, and that the plaintiff filed with the defendants

two written petitions as alleged. They deny the other allegations of the said paragraph.

3. Defendants admit the allegations of the third paragraph.

4. Defendants admit the allegations of the fourth paragraph except for the plaintiff's conclusion of law that the defendants violated Rule 21 of this Court by requiring plaintiff to offer such proof as he may think
8 entitles him to admission to the bar; and defendants invite the attention of this Honorable Court to the provision of said Rule 21 which states that no student shall be admitted until after proof of good moral character.

5. The defendants admit the allegations of the fifth paragraph of the complaint, except the allegation that in the petition therein referred to the plaintiff furnished further evidence as to his moral qualifications.

6. Defendants admit that they have refused and still refuse to certify plaintiff's name to this Honorable Court for admission to the bar. The other allegations of paragraph six they deny.

And for further answer these defendants say.

7. The plaintiff, Milton G. Carver, has taken four examinations for admission to the bar of this Honorable Court, to wit, in June 1937, December, 1937, June 1938 and December, 1938. He was unsuccessful upon the first three, but did succeed in passing the said mental examination in December, 1938. At the time of each of said examinations he was required to file sworn applications on blanks furnished him by the Committee containing certain questions which he was instructed to answer under oath, and which he did answer under oath. The ques-

tionnaire tendered him for the examination in June, 1937, did not contain any inquiry as to his application for leave to practice before any Government department, but each of the other three questionnaires contained the following question, to wit:

9 “(d). Have you ever applied for the right to practice before any Governmental department, bureau or commission?”

 “(e). If admitted to such practice have any charges ever been preferred against you?”

 “(f). If so, what was the result?”

He answered question (d) hereinabove quoted on each of said three applications: “No”. He made no answer to question (e) on the questionnaires of December, 1937 and June, 1938, but answered the questionnaire of December, 1938, “No”. On none of said questionnaires did he answer said question (f).

8. Upon all of the said questionnaires he was required to state whether he had ever been a party to or otherwise involved in any legal proceeding or had ever been a defendant in a criminal court, and, if so, to state the facts fully. In all four of said questionnaires he referred to a suit on a lease in which he had been defendant and in which a judgment had been recovered against him in the Municipal Court, but did not refer to any other proceedings of any character.

9. The fact is that on June 12, 1931, an order was issued against said plaintiff to show cause why he should not be excluded from practice before the United States Patent Office or any division thereof. That order was based on the ground that plaintiff was in effect holding himself out as authorized to prosecute applications for

patents when he was not in fact registered to practice before the Patent Office in patent cases; that he had advised an attorney at law that the latter could obtain registration to practice before the Patent Office in the manner outlined in a letter to such attorney; that a member of the bar was granted special permission to prosecute patent applications; that under that arrangement if such attorney would enter his name as attorney of record in a pending case before the Office, although all amendments to the application would be prepared by plaintiff or someone employed by him and after several such applications had been prepared and prosecuted under such an arrangement, the Patent Office would review cases so prosecuted and determine from the manner in which they were handled whether or not the attorney under consideration would be admitted to permanent practice before the Office; That such attorney by thus laying the groundwork, after half a dozen or more cases had been filed under his name, would be in a position to become registered permanently to practice before the Office; and that by following this course of action plaintiff saw no reason why such attorney should not become registered to practice before the Patent Office within the next two or three years. The order to show cause was further based upon the fact that plaintiff was using on his letterheads the words "Solicitor of Patents", thereby holding himself out as authorized to represent applicants for patents before the Patent Office when in fact he was not registered to practice before the Patent Office and consequently not authorized to represent applicants for patents.

10. Plaintiff in response to said rule filed a categorical denial of all the charges set out therein, but did not appear at the hearing either in person or by attorney.

After consideration of the evidence upon which the charges were based it was held by the Commissioner of Patents in a written opinion that said plaintiff had been guilty in respect of the actions hereinabove mentioned of such gross misconduct that he should no longer be permitted to practice before any division of the Patent Office, and that an order would be issued excluding him from such practice. On September 3, 1931, an order was passed accordingly. The Commissioner of Patents concluded his opinion with a statement that under Section 487 R. S. as amended by the Act of Congress of February 18, 1922, 42 Stat. L. 390, appeal might be taken from said rule to the Supreme Court of the District of Columbia.

11. Plaintiff availed himself of his right of appeal as aforesaid, and the hearing on said appeal was set for December 9, 1931, which hearing the plaintiff attended, and on December 14, 1931, an order was passed signed by the Chief Justice of this Honorable Court sustaining the said order of the Commissioner of Patents excluding the said Plaintiff from practice before the United States Patent Office or any division thereof. At a subsequent hearing before this Committee which will be hereinafter alluded to the plaintiff testified that at said hearing before the Court he had not had a full opportunity to state his case, although he admitted he had not requested an opportunity for further presentation.

12. Since being excluded from practice as aforesaid plaintiff has twice petitioned the Commissioner of Patents to be again permitted to practice, the last of said applications being dated December 30, 1939, and both of said petitions were denied.

13. After plaintiff successfully passed the mental test
12 as aforesaid for admission to the bar, his application for admission was referred to a Committee on Character and Fitness consisting of one member of this Committee. The above matter was brought to the attention of the plaintiff and he was given a thorough opportunity to make any explanation he desired to make with respect thereto and also with respect to the litigation in the Municipal Court hereinabove referred to. Said member of this Committee brought the matter to the attention of the full Committee on April 28, 1939, and plaintiff appeared before this Committee and was again given full opportunity to explain said acts before it, but the Committee postponed a decision upon the matter until it should have before it the documents from the United States Patent Office upon which said charges had been founded and been sustained. When the information desired was furnished, plaintiff was given another opportunity to appear before the Committee on May 26, 1939, which opportunity he availed himself of and at the conclusion of the conference he stated that he had received a full hearing and that he had nothing further to present. At said meeting, as well as at the prior meeting, he was also questioned with regard to the Municipal Court judgment hereinabove mentioned. On May 27, 1939, plaintiff was advised that the Committee had declined to certify his name for admission to the bar.

14. Thereafter on June 21, 1939, plaintiff addressed a communication to this Honorable Court in the form of a petition in plaintiff's handwriting in which he asked "for counsel for the purpose of taking out a mandamus direct to the judges comprising the tribunal of judges who appointed the bar committee, to the end that my denial

13 to practice may be further considered by said tribunal of judges" for the reasons stated in the petition. In said petition he admitted that he had had a fair hearing before the Committee, recited at some length, among other things, the action of the Patent Office in denying him the right to practice therein, and claimed that the charges there found to be true do not involve good moral character within the meaning of the rule which requires the Committee to examine into good moral character of applicants. He contended that there was no connection between denying him admission to practice before the Patent Office and the propriety of his admission to practice law before this Court. No notice of the filing of said petition was served by plaintiff upon this Committee. This petition was denied on June 23, 1939.

15. Up to this time plaintiff had apparently not been advised by counsel, but on February 16, 1940, he filed with the Committee, through Mr. Richard L. Merrick, his attorney, a petition for reconsideration of his application for admission to the bar. In view of the fact that he had not been represented by counsel upon his prior hearings the Committee granted said application, and on March 8, 1940, he was given a full hearing at which, for the first time, all the proceedings were stenographically reported, and are embraced in a transcript covering eighty-five pages. At this hearing plaintiff testified among other things that he had studied patent law for two years prior to committing the said acts complained of before the Patent Office and on account of which he had been excluded from practice therein; that prior to writing the letters upon which said charges were based he had been informed by the Patent Office that he could not be registered therein; that he had on his door

14 a sign on which were the words "Copyrights, Patents and Trademarks"; and that he used the words "Solicitor of Patents" on his letterheads because others who were not registered were doing so. On March 9, 1940, as alleged in the fourth paragraph of the complaint, plaintiff's attorney was advised that the Committee could not see its way clear to recommend plaintiff's admission to the bar. On August 7, 1940, plaintiff again filed with the Committee through the same counsel, a petition seeking a reversal of the action of the Committee and plaintiff was notified through his counsel on September 30, 1940, that the Committee had considered said petition and could not see its way clear to depart from its former conclusion.

16. The judgment in the Municipal Court aforementioned was referred to at the various conferences between plaintiff and the Committee because it had been mentioned by plaintiff in his application for leave to take the examination. This judgment was rendered on October 12, 1933, for rent under a lease, and was in the amount of one hundred and fifty dollars (\$150.00) with interest. The said judgment was rendered against the plaintiff by default, although he was present in Court on the morning of the day when the judgment was rendered, and claimed that he had a defense thereto. No motion for a new trial was ever made by him nor did he appeal from the judgment. However, he treated it as void because of his own theory of the law in the case. The judgment was never docketed in the upper Court, and no attempt was ever made by plaintiff to pay it until the matter was discussed between him and this Committee, after which he endeavored to settle it for three

or four dollars. The petition filed by his counsel before this Committee for a second re-hearing as aforesaid shows that on June 22, 1940, the said judgment had been 15 satisfied in consideration of the payment of forty-five dollars (\$45.00). The shorthand transcript of the proceedings before this Committee on March 8, 1940, shows that plaintiff's only object in settling said judgment was because he believed that this Committee would require it as a condition of his admission to the bar. He admitted that he had paid all other bills against him, but assigned as a reason for not paying this judgment, that he could not afford to do so.

17. Having hereinabove recited the important facts taken into consideration by this Committee in declining to certify plaintiff's name for admission to the bar, the Committee hereinafter recites the grounds of its refusal to so certify the plaintiff, as follows, to wit:

(a) After an exhaustive examination as to plaintiff's character as required by Rule 21, the Committee has reached the conclusion that the plaintiff is lacking in that "good moral character" which should be possessed by members of the bar;

(b) That plaintiff, in failing in his application for permission to take the examination, to allude to his former exclusion from practice before the Patent Office attempted to deceive the Committee into believing that no charges had ever been preferred against him before any Governmental department, bureau or commission;

(c) That plaintiff, in failing in his four applications for permission to take the bar examination, to allude to the appellate proceedings in this Court following the

16 order of his exclusion from practice before the Patent
Office, attempted to deceive the Committee into believing that he had not been a party to any such proceedings;

(d) That plaintiff had been guilty of gross and unethical misconduct in representing himself to the public as authorized to appear for applicants for patents before the Patent Office, when in fact he was not registered to practice before the Patent Office and consequently not authorized to represent applicants for patents;

(e) That plaintiff has been found guilty of a fraudulent scheme calculated to deceive the Patent Office into admitting to practice therein persons not duly qualified therefor;

(f) That plaintiff has willfully ignored a judgment of the Municipal Court of the District of Columbia against him until he believed that the payment of same would facilitate his admission to the bar of this Honorable Court, and then made a settlement of said judgment solely for the said purpose.

18. In response to the plaintiff's third prayer for judgment, these defendants say that they will at the hearing of this case submit to this Honorable Court for its consideration and action, as requested by the plaintiff in said prayer, "all records, evidence, and papers filed with and adduced before defendants as such Committee
relative to the moral character of plaintiff and his
17 moral qualifications for admission to the bar of this Court."

Walter C. Clephane
John E. Laskey
Edward Stafford
Vernon E. West

Charles F. Wilson
 Edmund L. Jones
 Andrew S. Duvall
 Austin F. Canfield
 Joseph A. Burkhart,

as Members of the Committee
 on Admissions and Griev-
 ances of the District Court
 of the United States for the
 District of Columbia

(Signed) By Walter C. Clephane, (Sgd.)
 Walter C. Clephane, Chairman
 843 Investment Building.

District of Columbia, ss:

Walter C, Clephane, being first duly sworn according to law, on oath deposes and says that he has read the foregoing answer by him subscribed on behalf of himself and the other members of the Committee hereinabove mentioned, and that he knows the contents thereof; and that he verily believes the matters and things therein stated to be true.

(Signed) Walter C. Clephane (Sgd)

Subscribed and sworn to before me this 30th day of
 October, 1940

(Signed) Beatrice A. Clephane (Sgd)
 Notary Public, D. C.

18 I hereby certify that on October 30, 1940, I mailed postage prepaid, a copy of the above answer to Richard L. Merrick, Esq., addressed to his office, 913 Woodward Building, Washington, D. C.

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
as members of the Committee on Admissions and Grievances,
District Court of the United States for the District of Columbia, Defendants.

**Order Denying Motion for Hearing Before Full Bench and
Setting Case for Hearing.**

The plaintiff's motion for hearing before the full
21 Bench of this Court, having been duly considered by
the Court, it is, this 21 day of February, 1942,

Ordered that said motion be and the same hereby is
overruled, and that this case be set for hearing before
three Judges of this Court, constituting a General Term
thereof, on the 2nd day of March, 1942, at 10:00 A. M.

By the Court

/s/ Jennings Bailey
Justice

Seen

Richard L. Merrick
Atty for Plaintiff
Feb. 20, 1942

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Before the General Term.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
Defendants.

Request for Admission.

You are hereby requested to admit at any hearing of
the above entitled case, the allegations of the defendants'
answer as embodied in paragraphs No. 7-16 both in-
20 clusive.

Walter C. Clephane
Attorney for Defendants
843 Investment Bldg.
Washington, D. C.

To
Mr. Milton G. Carver
c/o Richard L. Merrick, Esq.
913 Woodward Bldg.
Washington, DC

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
as members of the Committee on Admissions, etc., De-
fendants.

**Answer of Plaintiff to Request for Admission of Allegations
of Defendant's Answer, Paragraphs 7-16, inc.**

Plaintiff says the said paragraphs 7-16 both inclusive,
of defendant's answer, evidently intended by defend-
ants to be a cross-bill, state no cause of action, state con-
clusions without any proper recital of facts upon which
to base such conclusions, are argumentative, and are an
attempt by said defendants to submit a brief in lieu
22 of facts and argue the case in an answer, wherefore
plaintiff moves to strike such paragraphs jointly and
severally;

In the alternative, plaintiff answers said paragraphs
as follows:

8. He admits he passed the mental examination in
December, 1938, and admits that he, along with others,
including, he is informed Mr. Chief Justice Taft, had taken
previous mental examinations for the Bar and had failed
to pass; says that he never was admitted to practice and
has no recollection of ever making any formal request for
admission to practice, and calls for strict proof and pro-
duction of all documents alleged by defendants.

8. He says he understood the question to be applica-
ble only to cases in which he was a defendant, and did not

then, and does not now consider such question applicable to "any other proceedings of any character."

9. He was never admitted to practice before the United States Patent Office; it was not necessary to be admitted to pursue such matters as he pursued there; he admits giving certain suggestions to a certain attorney at law with reference to procedure in a patent matter and says that he had a perfect right so to do and says he did not undertake to practice in Patent matters before the Patent Office or any division thereof and did not hold himself out as able to do so nor as being registered to do so, and further says that in giving such said advice to such said attorney he was not guilty of any gross misconduct and further says that he is advised, believes, avers, and expects to prove, if necessary, that a member of the Defendant Committee herein gave advice to a client and devised, or assisted in devising a scheme, by which said client was enabled to, in fact, handle and control estates of persons non-compos-mentis to a number prohibited by Statute by the laws of the District of Columbia and that said arrangement and scheme came to light before a Justice of this Court upon a hearing on a petition for allowance for fees; that the defendant Committee has never taken any action concerning such advice given by one of its own members, and plaintiff says that, judging by that standard, plaintiff should be *commended* by this
23 Committee for his sterling character.

10. He denies that he filed a categorical denial of the charges, but says he truthfully and fully informed the Patent Office and gave an explanation thereof; that, in any event, the incident occurred over ten years ago and, if any error there was, it was an error of the mind and

not of the heart, and, since he had never been admitted to practice before the Patent office, it is a distortion to allege that he was *no longer permitted to practice*.

11. He admits the allegations of paragraph 11 of defendant's answer but further says that the reason for his statement to the defendant Committee was that upon the hearing in Court he was not represented by counsel and was allowed only a few minutes whereas his opponent was allowed approximately one half hour.

12. He has no recollection whatever of any such petitions unless a request for reconsideration of the prior order is deemed, by conclusion of the defendant, to be such.

13. He says the true facts are that the defendant Committee grilled him for a period of four hours, interposed his examination with sarcastic remarks. Stated that the defendant could not overturn a decision affirmed by the Court just to allow plaintiff to practice law and also stated that all that seemed necessary now was to deny plaintiff the right to practice law, the last statement being made by Committee Member Stafford. Plaintiff has no knowledge of why the Committee postponed actions or decisions, and says he stated he had had a full hearing as far as it went and says that it went *FULLY* into the Municipal Court matter and that it was an attempt to coerce him or induce him to settle a judgment which had become outlawed because of his inability to pay it previously; that such litigation was plaintiff's own private, personal affair.

14. He says he is advised he is not required to answer paragraph 14 in that the allegations thereof are ei-

ther a matter of record or the conclusions, arguments and insinuations of the defendant Committee, but, if same be deemed material, he calls for strict proof thereof.

24 15. He says he is advised he is not required to answer paragraph 15 in that it represents conclusions of the defendant or matters of record and plaintiff calls for strict proof thereof, he denies the words alleged by defendants were on *his* door but admits they were on a door of an office jointly occupied by plaintiff with other persons.

16. The judgment in the Municipal Court is plaintiff's own private, personal, business and no moral turpitude is involved; the judgment was for a period of time during which plaintiff herein did not occupy the premises and plaintiff considered—and still considers—that he had good and justifiable cause for vacating the same and plaintiff was not able to settle the judgment because of lack of finances.

17. He is advised and believes he need not answer paragraph 17 of defendant's answer, and says the same consists of conclusions of the defendant not based upon facts nor upon facts adduced before it, and he denies that he attempted to deceive the Committee, and denies that he ever represented himself to the public as authorized to appear for applicants in patent matters, denies that he has been found guilty of a "fraudulent scheme" and says that fraud was never in issue in the patent office matter, and denies the allegations imputed in such manner as to insinuate unwarranted evasion of the Municipal Court matter.

He further says that during formal hearing before the Committee he was falsely accused by a member of

the Committee as appears in the transcript of testimony especially with reference to the testimony of Lewis Ottenberg, Esq., to which transcript reference is prayed.

He further says that it is obvious that the defendant, by its answer, attempts to divert this Court from the issue herein, viz., that the Court, and not the Committee, has sole and exclusive jurisdiction to pass upon the moral qualifications of plaintiff and that affidavits and other documents and the complete record should be delivered to this Court for a determination of the moral fitness
25 of this plaintiff.

Milton G. Carver

Richard A. Harman
1420 N. Y. Ave. N. W.,
Washington, D. C.
Attorney for Plaintiff

District of Columbia, ss;

Milton G. Carver, being first duly sworn, on oath says he has read and knows the contents of the foregoing answer, by him subscribed; that he verily believes the same to be true.

Milton G. Carver

Subscribed and sworn to before me this....day of Feby.,
1942

Notary Public, D. C.

IN THE DISTRICT COURT OF THE UNITED STATES.
FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
Defendants.

Upon hearing of plaintiff's petition for admission to the bar, the Court, in General Term, finds that the applicant, both at his hearing before the Committee on 26 Admissions and Grievances, and in open Court in the present proceedings, has failed to establish such qualifications as to character as to warrant his admission at this time. Accordingly, his petition will be dismissed.

By the Court:

Bolitha J. Laws /s/
James W. Morris /s/
Matthew McGuire /s/

March 23, 1942.

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Holding a General Term.

Present: Associate Justices Laws (presiding),
Morris and McGuire.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
Defendant.

Order Dismissing Complaint.

This cause having come on for hearing upon complaint filed by plaintiff William G. Carver to require the Committee on Admissions and Grievances of the Court to certify his name for admission to the Bar of the Court and upon the answer of the Committee on Admissions, and Grievances, the Committee appearing by Walter C. Clephane, Esquire, and the plaintiff not being present in open Court but being represented by Richard A. Harman, Esquire, and the Court having considered all the evidence and the argument for counsel for both parties and having reached the conclusion that the plaintiff, both of his hearing before the Committee on Admissions and Grievances and in open Court in the present proceedings, has failed to establish such qualifications as to character as to warrant his admission at this time to the bar of the Court, it is, by the Court, this 31st day of March, 1942,

Adjudged, Ordered and Decreed that the complaint filed by the plaintiff Milton G. Carver be, and the same hereby is, dismissed.

By The Court:

/s/ Bolitha J. Laws

Associate Justice Presiding

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
Defendants.

Assignment of Errors.

The Court erred:

- 1 - In denying motion for hearing before full bench.
- 31 2 - In dismissing complaint filed by plaintiff.

James J. Laughlin

National Press Bldg.

Counsel for Plaintiff.

I certify that I have this day mailed copy of this assignment of errors to John E. Laskey, Esq. Albee Bldg. Washington, D. C. Counsel for Defendants.

James J. Laughlin

This the 19th day of June, 1942.

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
Defendants.**Designation of Record.**

The Clerk will please prepare the record in the above
entitled cause and include therein the following:

- 1 - Complaint
- 2 - Answer
- 3 - Defendant's request for admission.
- 4 - Motion for hearing before full bench
- 34 5 - Order denying motion for hearing before full
bench.
- 6 - Answer of plaintiff to cross bill
- 7 - Minute of hearing
- 8 - Opinion of Court
- 9 - Order dismissing complaint.
- 10 - Notice of appeal
- 11 - Assignment of errors
- 12 - This designation of record
- 13 - Clerk's certificate.

James J. Laughlin
National Press Bldg.
Counsel for Plaintiff.

I certify that I have this day mailed copy of this
designation of record to Mr. John E. Laskey, Albee Bldg.
Washington, D. C. Counsel for Defendants.

James J. Laughlin

This the 19th of Jpne, 1942.

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
Defendants.

Supplemental Designation of Record.

The clerk will include in the designation of record
the following:

- 1 - Order signed July 15, 1942 permitting exhibits to
35 -be sent to the United States Court of Appeals.

James J. Laughlin

National Press Bldg.

Counsel for Plaintiff.

I certify that the above supplemental designation of
record (copy thereof) was mailed to John E. Laskey,
Esq. Counsel for Defendants. this day.

James J. Laughlin

This the 15th day of July, 1942.

IN THE DISTRICT COURT OF THE UNITED STATES.
FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 8731.

Milton G. Carver, Plaintiff, vs. Walter C. Clephane *et al.*,
Defendants.

**Order Permitting Exhibits to Be Sent to the United States
Court of Appeals for the District of Columbia.**

Upon motion of the plaintiff it is by the Court this
15 day of July, 1942

Ordered that the following documents be sent to the
United States Court of Appeals as original exhibits to be
used in the appeal of this case:

33 Transcript of shorthand report before Committee of
Admissions and Grievances March 8, 1942

Certificate from the Commissioner of Patents refer-
ring to Petition of Milton G. Carver for reinstatement to
practice before the Trade Mark Division dated January 27,
1938 and January 20, 1938

Letter dated February 28, 1931 from Milton G. Carver
to George F. Willis, Attorney at Law, El Campo, Texas.

Letters dated February 5, 1931 and March 13, 1931
from Carver to the said Willis.

By The Court

/s/ Daniel W. O'Donoghue
Justice

I consent:

John L. Laskey
Counsel for Defendants.

Filed Mar 23 1942 Charles E. Stewart, Clerk

M G Carver
Solicitor of Patents
DC

2/28/31

Mr. Geo. F. Willis
Atty. at law
El Campo, Texas

Dear Mr. Willis:

I enclose herewith copy (in triplicate) of the patent specification and claims of Messrs. Rich and Rich, for improvements in tractor implement attachment.

Kindly have the inventors sign the application papers on the proper lines. One copy is for your files and the other for the inventors, while the original must be returned to me for filing with the patent office.

You will note I have written your name in as an attorney of record, and it occurs to me that this is an excellent opportunity for you to obtain registration to practice before the patent office if the matter is of interest. I trust that this will meet your approval and, if so, will you kindly enclose, with the papers when executed and returned to me, a letter on your letterhead and over your signature, addressed to the Commissioner of Patents and mentioning the enclosed application herewith, and asking that you be given special recognition as the attorney who will prosecute this application. I believe you might also mention that you are a member of the Bar of the State of Texas. Of course, it is my intention to have all amendments prepared here, copies of which will be sent you. The official actions of the patent office will however, be mailed direct to you and you should immediately forward the same here so that the amendment re-

ferred to may be prepared and filed with the patent office. I believe if you keep the copy of the enclosed application and follow the prosecution of the case through to a final determination before the patent office on basis of the amendments I will send you, you will be in an excellent position to become registered to practice before the patent office.

There are two points I would like to have you obtain further information from the inventors on, so that the first amendment may be made in as positive style as possible; and that is (1) just what do the inventors consider to be novel in their cultivator hitch over the references furnished them? Please have them go into minute detail in answering this; and (2) what do they consider novel as to the steering mechanism? A great many times an inventor is able to give the attorney a lead which results in the issuance of a good patent when it would first appear that claims not so good were going to be allowed; and I trust therefore, that you will develop all possible information along the line of the two questions above propounded.

Respectfully,

M G Carver

P.S. Please forward check in amount \$25 , payable to Commissioner of patents covering government filing fee, with the return of the papers.

Filed Mar 23 1942 Charles E. Stewart, Clerk

M G Carver
Solicitor of Patents
D C

2/5/1931

Mr. Geo. F. Willis,
Atty. at law
El Campo, Texas

Dear Mr. Willis:

Reference is had to yours of Jan. 20th concerning patenting the tractor attachment of inventors Rich and Rich.

I have carefully inspected the references sent you with my search report and in the light of the photograph and description submitted, am of opinion that several claims are obtainable on Messrs. Richs' device.

As advised in previous letter, one of the references developed is out of print, namely, patent 1,587,797, therefore, copy not available until reproduced about 3 months from this writing.

Relative to the total fees chargeable against this application if prepared and prosecuted by me, I have to advise that it appears 3 sheets of patent drawings are necessary to properly illustrate the device, and the charge therefor will be \$25. The atty. fee is \$60 covering prosecution of the application to final determination before the patent office. It is the practice of some attorneys to quote a lower initial fee and then make a charge of from \$10 to \$15 for each amendment prepared and filed with the patent office. As some applications involve the filing of 8 or 9 amendments, you will readily note that this works a hardship on the inventor, and it has been my policy to quote a flat fee for the entire handling of all

trademark and patent applications, although in trademark cases I quote a flat fee of \$10 per case where half a dozen or more applications are filed simultaneously.

The Government filing fee is \$25 and the final fee is also \$25 but this latter fee is not due or payable until I advise that the application has been allowed; and the inventor is allowed six months after the date of allowance of his patent to pay this final fee. The total fee in the present case is therefore, \$60, \$25, \$25 and \$25, or a total of \$135 covering everything. It might be possible to show Messrs. Richs' device on two sheets of drawings, and if so, the charge would be about \$17 for the two sheets. As a general rule, sheets of patent drawings are \$10 each, and in some cases (like in a differential, etc.) the charge may be \$20 to \$25 per sheet.

In the preparation and prosecution of this application mentioned herein, I am assisted by Mr. Woodward, an electrical engineer, and under this arrangement you will readily see that to make a charge lower than the \$60 146 fee quoted would be to undertake the preparation and prosecution of the case at what might be termed a loss.

In the event you are desirous of having me proceed on the basis outlined herein, please return the photograph to me with the detailed description and any other information the inventors may be able to furnish stressing what they consider to be the novelty of their invention, particularly just what they consider is their improvement over any similar device. Please go into full details as regards the manner of attachment to the tractor body.

Trusting that I may be of service to your clients in the preparation and prosecution of their patent application and assuring you that everything will be done here to secure the best protective claims, I am,

Very truly yours,

M G Carver

Filed Mar 23 1942 Charles R. Stewart, Clerk

M G Carver
Solicitor of Patents
DC

Mar. 13, 1931

CONFIDENTIAL

Mr. Geo. P. Willis
Atty. at law,
El Campo, Texas

Dear Mr. Willis:

Referring to your letter of recent date concerning becoming registered to practice before the patent office.

A member of the bar is granted special permission to prosecute patent applications. After several have been prepared and prosecuted under this arrangement, the patent office reviews the cases in question and determines from the manner they were handled whether or not the attorney under consideration will be admitted to permanent practice before the patent office. Of course, this rule does not apply to anyone who has prosecuted cases in

the office of a registered patent attorney for 3 years, as 147 in this case the patent office has the party submit a

list of the cases handled and his employer certifies that he actually handled the cases, and practically forthwith the patent office registers such party to practice before it, even though he happens to be a law college graduate or bar member.

A member of the bar who is practicing under the special permission above mentioned will not be allowed to solicit any patent applications by sending out letters, literature, etc. I have always sent out ethical letters soliciting patent and trademark business and would like to continue to do so, and some time ago when I applied to

be registered at the patent office, I found that I would not enjoy this privilege, so did not carry the matter any further, although I am entitled to be registered, having had about six years in the office of two registered patent attorneys and completing three years of law school, two of which were patent attorney courses.

Some time ago I assisted a Mr. Woodward in becoming registered to practice before the patent office by securing cases and having him handle them; and I was of opinion you might be interested in becoming registered, which was the principal reason for inserting your name in the recent patent application I filed with the patent office. In all cases heretofore, Mr. Woodward (my associate here) has acted as the attorney of record, although I assisted in writing the specification and claims of a considerable number of cases. I prepare and prosecute, personally, all trademark applications however (just received notice from the patent office that El Campo trademark "Provo-min" had been allowed).

I believe if you will carefully follow through the patent application, as per copies of actions and amendments which will pass through your hands, that you 148 will lay the ground-work to be the attorney of record in other cases, so that later on after half a dozen or more cases have been filed over your name, you will be in position to become registered permanently to practice before the patent office.

Now I don't know whether you consider the reviewing by you of all application papers, amendments and official actions as the equivalent of actually preparing and prosecuting a patent application; but if you have no objection along this line I see no reason why you may not become registered to practice before the patent office with-

in the next two or three years, that is, if you file additional cases to the one already submitted.

The patent office in granting you permission to prosecute the application already filed in your name, may call upon you to submit documentary proof of the fact that you are a member of the bar which, of course, is one of the formalities they require of all prospective registrants who desire practicing before the patent office. I do not believe it will be necessary to write my name into correspondence you may have with the patent office concerning your becoming registered as, as stated herein, I sent out occasional circular letters soliciting new business which the patent office frowns upon very much because it really amounts to taking an advantage of other parties who are undergoing registration with the patent office and who are not entitled to send out a single piece of literature under penalty of having their temporary permission to practice revoked.

I believe I have set forth in considerable detail just the situation which exists regarding practice before the patent office, and will be glad to furnish you any other details relative thereto, if you write me further, as I am quite familiar with it.

Respectfully,

M G Carver

**Hearing Before Committee on Admissions and Grievances,
District Bar Association March 8, 1940.**

R-44 Statement by Mr. Merrick, Counsel for Mr. Carver: "On behalf of Mr. Carver I want to say my investigation has developed that he is a man of good character, lives with his wife, and bears a good reputation in the neighborhood in which he lives, in the department in which he is employed and with those who know him well enough to formulate a definite opinion as to his character and reputation."

R. 86 Mr. Canfield: "But it is important. He never heard of you, never knew of you, never heard of this case until last week That is what he said. We can bring him down if it becomes necessary, that you walked in last week and told him about the judgment and that there was a matter pending that required you to get rid of the judgment, that the statute of limitations had run and that there was no way to force you and you offered him three dollars for it and raised hell because he wouldn't take it. Now that is what he just told me." (underscoring ours).

Mr. Carver. "Well I went in his office and I didn't raise any "h" and I mentioned the statute of limitations because I made a search of the Supreme Court one day when I was down there when I saw the file wrapper in the case and it had not been recorded."

R-92 Mr. Canfield: "There is another thing, he said that you offered him three dollars but that there wasn't anything that they could do about it".

Mr. Carver. I never did.

Mr. Canfield: "And that it was necessary to have it lifted and he said 'Old man, if that is true why worry

me about it' There is no way of fixing it, why do you come in and make this generous offer of three dollars and you said it was necessary to have it lifted, that it was of importance to you and you gave him the data and also Mr. Partridge's name."

Mr. Carver: "He asked for it."

Mr. Ottenberg testifying.

R-96 Mr. Merrick: "Did you tell him that Mr. Carver raised hell in your office about the \$3.00".

A. "No".

Mr. Canfield: "The impression I got from Mr. Ottenberg's conversation was that Mr. Carver tried to get him to take \$3.00 and that it was important to get it lifted off the record immediately and that he was raising hell - however here is his testimony for whatever it is worth".

R-97 Mr. Merrick: "Then why was it necessary for you to tell the committee that he replied that Mr. Carver raised hell down there because he wouldn't take the \$3.00.

Mr. Canfield: "I didn't say that he did".

BRIEF AND APPENDIX FOR APPELLEES

IN THE United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 8324 FILED JAN 18 1943

MILTON G. CARVER, *Appellant*,
v. *CLERK*

WALTER C. CLEPHANE, AS CHAIRMAN AND MEM-
BER OF THE COMMITTEE ON ADMISSIONS
AND GRIEVANCES, DISTRICT COURT OF THE
UNITED STATES FOR THE DISTRICT OF CO-
LUMBIA, AND OTHER MEMBERS OF THE COM-
MITTEE, *Appellees*.

Appeal from District Court of the United States for the
District of Columbia.

WALTER C. CLEPHANE,
843 Investment Building,
Washington, D. C.,
JOHN E. LASKEY,
509 Albee Building,
Washington, D. C.,
Counsel for Appellees.



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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8324

MILTON G. CARVER, *Appellant*,

v.

WALTER C. CLEPHANE, AS CHAIRMAN, AND MEMBER OF THE COMMITTEE ON ADMISSIONS AND GRIEVANCES, DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, AND OTHER MEMBERS OF THE COMMITTEE, *Appellees*.

Appeal from District Court of the United States for the
District of Columbia.

BRIEF FOR APPELLEES.

COUNTER-STATEMENT OF THE CASE.

The inaccuracies and omissions of appellant's "Statement of the Case" (Appellant's Brief 3-4) require appellees to make a Counterstatement.

Appellant, Milton George Carver, filed with the District Court of the United States for the District of Columbia in the years 1937 and 1938 four applications, each under oath, for admission to its bar. Under Rule 93(a) of said Court (Appellant's Brief 2) said applications were duly referred to the Court's Committee on Admissions and Grievances, appellees herein; and appellant was permitted to take bar examinations in June 1937, December 1937, June 1938 and December 1938. He failed to pass the first three, but passed the examination of December, 1938.

In each of the said four applications he was asked whether he had ever been a party to or otherwise involved in any legal proceeding, or had ever been a defendant in a criminal court, and, if so, to state the facts fully; and in each instance his answers referred to a suit on a lease in which judgment had been recovered against him in the Municipal Court of the District of Columbia, but made no mention of any other proceedings of any character.

In the last three applications he was asked the following questions:

“(d) Have you ever applied for the right to practice before any Governmental department, bureau or commission?”

“(e) If admitted to such practice have any charges ever been preferred against you?”

“(f) If so, what was the result?”

In each instance he answered “No” to question (d); on the December 1938 application he answered “No” to question (e); he made no answers to question (f). (Appellant's App. 19-20, 31-32.)

After appellant passed the mental examination of December, 1938, the Committee in accordance with Rule 93(b) of said District Court (Appellant's Brief 2) inquired into his “good moral character”. It was learned that he had been excluded from practice before the Patent Office, on charges of gross misconduct, and that his appeal from the order of exclusion had been dismissed by the Supreme Court of the

District of Columbia (Appellant's App. 20-22, 31-33; Appellees' App. 7-10). Said proceedings were not disclosed in any of his four applications.

Appellant for some years had been engaged in representing claimants in trade-mark matters. The Commissioner of Patents issued, June 12, 1931, an order against him to show cause why he should not be excluded from practice before the United States Patent Office, or any division thereof, on charges that he was holding himself out as authorized to prosecute applications for patents when he was in fact not registered to practice before the Patent Office in patent cases, nor eligible for such registration; and that he had presented to one George P. Willis, an attorney of El Campo, Texas, a scheme by which he alleged Willis might become registered to practice before the Patent Office by asking for special recognition as an attorney and then filing in his own name applications and proceedings which were to be prepared by appellant or under his direction, and using a series of such cases as a showing that he, Willis, was entitled to be registered. Appellant denied the charges; and after notice and hearing, at which he failed to appear, the Commissioner, September 3, 1931, excluded him from practice before any division of the Patent Office, on a finding of "gross misconduct". He appealed from the order of exclusion, and on hearing the Supreme Court of the District of Columbia sustained the order, December 14, 1931. (Appellant's App. 20-22, 32-33, 42-48; Appellees' App. 7-10.)

In 1934, on his petition for a rehearing, the Patent Office allowed him to go into the merits of the case again, and the petition was denied. Thereafter, on his petition for recognition before the Trade-Mark Division, a hearing was granted him February 10, 1938. When questioned in regard to his use of the words "Solicitor of Patents" on his letterheads, and his filing of powers of attorney, after the order of exclusion of 1931 and after the rehearing of 1934, he attempted to plead "a general denial" and to "rely on the constitutional rights against self-incrimination". His

petition was denied. (Appellant's App. 22, 33; Appellees' App. 43-51.)

After the foregoing facts were learned, appellant was interviewed by a member of the Committee, and thereafter was given a hearing before the full Committee, and opportunity to explain the Patent Office proceedings, and the Municipal Court judgment referred to in his applications. After receipt of details of the Patent Office case, the Committee gave appellant still another hearing, May 26, 1939, at the conclusion of which he stated that he had received a full hearing and had nothing further to present. After consideration of the matters developed at said hearings, the Committee declined to certify appellant's name for admission to the bar (Appellant's App. 23, 33; Appellees' App. 3, 9-10, 43).

Thereafter appellant requested the Supreme Court of the District of Columbia to appoint counsel "for the purpose of taking out a mandamus direct to the judges * * * who appointed said Committee"; he admitted that he had had a fair hearing before the Committee, but claimed the Patent Office exclusion charges did not involve "good moral character" within the meaning of Rule 93 (b), and that there was no connection between the denial of admission to practice before the Patent Office and the propriety of his admission to the bar of the Court. The Court denied his petition, June 23, 1939 (Appellant's App. 23-24, 33-34).

He again petitioned the Patent Office in December 1939 for permission to practice in trade-mark cases, and the petition was denied, in January 1940 (Appellees' App. 21-22, 51-53).

In the foregoing proceedings appellant had acted in his own behalf; but February 16, 1940, he filed with the Committee through counsel a petition for reconsideration of his application for admission to the bar. Upon that petition he was given a hearing before the full Committee, March 8, 1940, at which the proceedings were stenographically reported, the transcript being an exhibit filed in the hearing

of appellant's complaint, and appearing in the Record herein, pp. 38-123. Excerpts therefrom appear in Appellees' Appendix, pp. 1-43.

Appellant's counsel presented five affidavits tending to establish appellant's general good reputation during the preceding ten or fifteen years, and gave a purported summary of the Patent Office charges, ascribing appellant's difficulties mainly to lack of tact (Appellees' App. 3-6, 26-27).

Appellant was then questioned in regard to his appeal from the exclusion order (Appellees' App. 7-9), his letters to Willis (Appellant's App. 42-48), and his attitude toward the scheme suggested in those letters (Appellees' App. 11-14, 16-17, 20). He testified, among other things, that prior to writing them he had studied patent law for two years; he admitted that he had had on his door a sign reading "Copyrights, Patents and Trademarks", and had used the words "Solicitor of Patents" on his letter-head and had sent out letters soliciting patent and trade-mark business, when he was not registered before the Patent Office; that before he wrote the Willis letters he had been informed by the Patent Office that he was not eligible to practice since he was not a member of the bar and did not hold an engineering degree, but that he still considered he was eligible and wrote Willis that he was eligible (Appellees' App. 12, 14-18). In spite of his repeated attempts to be admitted to practice before the Patent Office, he insisted he had not "applied for registration" nor been "denied registration" because he had "never tried to be registered exactly", and had filed no formal application for registration because he had been told he could not be registered (Appellees' App. 18-22). He stated he did not give consideration to the propriety of the scheme outlined in the letters to Willis, because it was something that happened, "from hearsay", in another case and could be cited as any other law precedent, without being party to the scheme; he could not remember where he heard of it, although he verified it and learned that the Patent Office found it out and withdrew the

registration in that case (Appellees' App. 11-14, 16-17). He said the scheme was not carried out in the Willis case, because he turned over the Willis application to a registered attorney. Willis thereafter caused said letters to be put into the hands of the Patent Office (Appellees' App. 13-14, 16). Appellant was of opinion, at the time of hearing, that the scheme "would not be good today", that there had been a change in the law, and he had been to law school and had studied legal ethics, and "would not do it today" (Appellees' App. 17, 20). (However, in his "Answer" of February 14, 1942, Appellant's App. 31-35, he insists that he "had a perfect right" to suggest that scheme to Willis.)

Appellant was also interrogated about the suit on a lease, in which a judgment was obtained against him. Louis Ottenberg, Esquire, attorney for the estate of the former owner of the property, and Daniel Partridge III, the attorney who handled that litigation, appeared before the Committee and testified; appellant in person and by counsel questioned said attorneys. Their testimony in certain respects controverted appellant's statements (Appellees' App. 24-25, 28-34, 38-43).

The judgment, for \$150.00, was obtained in 1933 in a suit for apartment rent due under a yearly lease for a period after appellant had vacated the premises after giving a thirty-day notice. Acting as his own counsel, he filed affidavits of defense claiming the lease was invalid because it "was not signed", although he "did not say who it was not signed by" (Appellees' App. 23-25, 34-35); but the original lease signed by both parties was before the court at the trial and was exhibited to the Committee at the hearing (Appellees' App. 37). On the day of the trial appellant was at court but left before the case was called; and after *ex parte* proof, including proof of the execution of the lease, judgment by default was entered against him. He made no attempt to have the judgment set aside and took no appeal. He still claimed before the Committee that he was a tenant by sufferance and under no liability, because

the lease was invalid, and that he had a good defense but never got an opportunity to have a trial on the merits; and he attempted to assert that the lease produced at the trial was not the one sued on, and that the signature of the rental agent was affixed afterwards (Appellees' App. 23-25, 36-37, 40-42).

Appellant and his counsel were repeatedly asked if there was anything further they wished to present, and they were given every opportunity to offer any evidence desired (Appellees' App. 3, 26, 39-40, 43).

The Committee could not see its way clear to recommend appellant's admission to the bar, and so informed him. Through the same counsel he again petitioned the Committee to reverse its action. After consideration the Committee declined to change its decision, and so informed appellant (Appellant's App. 14-15, 25).

Thereafter this action was filed, through the same counsel representing appellant before the Committee. Pending hearing new counsel appeared on his behalf (Appellant's App. 31-35), and still other counsel has represented him on this appeal (Appellant's App. 38-40).

The complaint herein was based upon appellant's claim of qualification for admission to the bar and of compliance in all respects with the requirements of the Committee and the Rules of the Court; he charged that the Court's power to admit members to its bar cannot be delegated, and that the Committee had unlawfully refused to certify his name and attempted to deny him admission. He prayed that the Committee be commanded to certify his name, or in the alternative to certify the record to the Court, and that thereupon the Court admit him.

The Committee by its answer denied appellant's conclusions in regard to his eligibility for admission, and admitted that it had refused to certify his name to the Court; it set out the record of his applications and the investigations and hearings subsequently had, and stated in detail the grounds for its decision that he was found lacking in

that "good moral character" which should be possessed by members of the bar (Appellant's App. 18-28).

Appellant filed a so-called "Answer" (Appellant's App. 31-35) to that part of the Committee's answer which reported upon the facts of the case. His petition for a hearing before the full bench of the Court was denied by order which set the case for hearing (Appellant's App. 29); and it was heard March 3, 1942, before three justices of the Court holding a general term (Record 25). The transcript of the testimony taken at the Committee's hearing of March 8, 1940 (Record 38-123; Appellees' App. 1-43), and the certified copy of the proceedings before the Committee on Enrollment and Disbarment of the Patent Office (Record 124-143; Appellees' App. 43-51) were presented without objection to the Court as exhibits. Appellant was not present in Court, but was represented by counsel, and the Court considered "all the evidence and the arguments of counsel for both parties". By opinion filed March 23, 1942, and order entered March 31, 1942, the Court held that both at the hearing before the Committee and in open court in that proceeding appellant had "failed to establish such qualifications as to character as to warrant his admission at this time to the bar of the Court." The complaint was thereupon dismissed (Appellant's App. 36, 37).

Thereafter this appeal was taken.

SUMMARY OF ARGUMENT.

It rests with the Court to determine who is qualified for admission to its bar.

The hearings granted to appellant before the Committee and the Court fully complied with the requirements of due process of law.

The record shows that appellant failed to establish such qualifications as to warrant his admission to the bar of the Court.

Appellant was given fair hearings before the Committee.

Appellant failed to establish the "good moral character" necessary to admission.

ARGUMENT.

This Court now has for review, not the question of the Committee's refusal to recommend appellant's name to the Court below for admission, but the decision of that Court that appellant has failed to establish the necessary qualifications as to character for admission to its bar.

Proceedings for admission of attorneys are not actions or suits at law; they are in the nature of investigations by the court or its representatives to determine whether particular candidates are qualified to become its officers. Such an investigation is administrative in its nature, and may properly be carried out, under rules established by the court, by a bar examining committee. From the earliest times, the courts have employed members of the bar for the purpose of ascertaining the character and qualifications of those applying for membership, and this is a reasonable usage. *Rosenthal v. State Bar Examining Committee*, 116 Conn. 409, 414-417, 165 A. 211.

The Committee has no power to admit to the bar. Its duty is to inquire into the fitness and good moral character of applicants. Because of the results of its inquiry in the instant case, it refused, as was its duty, to recommend appellant's admission.

It rests exclusively with the Court to determine who is qualified to become one of its members as an attorney and counsellor. If those not properly trained or those morally disqualified are permitted to practice before the courts, the administration of justice will suffer.

Ex parte in the matter of David A. Secombe, 19 How. 9, 15 L. ed. 565;

Duke v. Committee, 65 App. D. C. 284, 288, 82 F. (2d) 890 (certiorari denied 298 U. S. 662);

Re Opinion of the Justices, — Mass. —, 180 N. E. 725.

A brief answer to each of the four points raised by appellant will, it is submitted, show the fallacy of his contentions.

Appellant Was Not Denied Due Process of Law.

The Court below under its inherent and statutory powers held a general term, of three justices, and by order passed therein refused to admit appellant to its bar. Appellant had such notice, hearing and opportunity to answer as constituted due process. *Goldsmith v. U. S. Board of Tax Appeals*, 55 App. D. C. 229, 4 F. (2d) 422; affirmed 270 U. S. 117, 70 L. ed. 494. The requirements of due process under the citations of authority appearing in appellant's brief, pp. 6-7, were fully met. He had the protection of his day in court, had notice and opportunity to be heard; the law heard before it condemned, proceeded upon inquiry and rendered judgment after trial; he had the same character of trial governed by the same procedure applied in other cases involving admissions to the bar, with full notice, hearing and opportunity to answer, in person and by counsel.

In regard to the proceedings before the Committee, the transcript which was submitted to the Court (Record 38-123, Appellees' App. 1-43) shows clearly that appellant was not "insulted" or "badgered", and establishes the falsity of the statement of appellant's brief, p. 6, that "The hearing descended to the miasmatic depths of a police precinct third degree". Appellant participated in that hearing in person and by counsel, and did not register objection to any of the proceedings.

Appellant Was Not Entitled to Admission.

When appellant filed his application for admission, when he petitioned the Committee to reconsider its refusal to recommend him, and when he sought to have the Court admit him in spite of the Committee's decision, he put directly in issue the fact that he was a person of good moral character, and assumed the burden of proof on that issue. *Spears v. State Bar*, 211 Cal. 183, 188, 294 Pac. 697; *Ex parte Walls*, 73 Ind. 95, 107-109. To entitle him to admis-

sion it was necessary that that fact should be found to be true; and on the record the proof he offered fell far short of sustaining that burden.

It was not necessary that the Committee charge or prove appellant "guilty of any offense" or "guilty of any dishonesty" (Appellant's brief, 7). The standard of personal and professional integrity which should be applied to persons admitted to practice law in the courts is not satisfied by such conduct as merely enables them to escape the penalty of the criminal law; and the scope of the investigation of an applicant's moral character is wider than the investigation to determine whether or not he has been convicted of an offense constituting a felony or a misdemeanor,—broader in its scope than that in a disbarment proceeding.

In re Wells, 174 Cal. 467, 163 P. 657, 660;

People ex rel. Healy v. Macauley, 230 Ill. 208, 82 N. E. 612.

The Committee in handling appellant's case attached no particular importance to the mere fact that there was an unsatisfied judgment against him. The material feature was his attitude toward a legal indebtedness; and in considering his moral character and fitness, his legal qualifications, and his conceptions of legal ethics, as an applicant for admission to the bar, the Committee was concerned with his handling of the litigation in which he acted as his own counsel, and with his attitude toward the judgment rendered by the court, which he disregarded until, because of the inquiry into the facts of its entry as reported on his application, he attempted to settle it for \$3.00 as though its settlement would remove an obstacle to his admission (Appellees' App. 23-24, 26, 28-34).

The record and his own testimony establish that he represented himself to the public as authorized to solicit patents when he was not in fact registered to practice before the Patent Office nor eligible for registration, and that he conceived or recommended a fraudulent scheme calculated

to deceive the Patent Office into admitting to practice a person not duly qualified, in order that he himself might through that subterfuge prosecute patent applications in that person's name; and because of those facts the Patent Office found him guilty of "gross misconduct" and excluded him from practice (Appellant's App. 20-22, 32-33, 42-48; Appellees' App. 11-22, 44-45, 47). His explanation that the scheme suggested in the Willis letters (Appellant's App. 42-48) was a recital of "hearsay" concerning another case, in which the Patent Office withdrew the registration upon discovery of the facts, could not be accepted. Said letters must be interpreted according to their natural meaning and intimations, particularly to the recipient; and so interpreted they justify the action taken.

In his "Answer" filed a week before the Court hearing, he attempted to justify the suggestion of the fraudulent scheme by contending that he "had a perfect right so to do" (Appellant's App. 32).

But of deeper concern to the Committee than the exclusion was the deception practiced by appellant in his applications for admission, in no one of which did he mention that exclusion or the legal proceedings of his appeal therefrom, when truthful answers to the questions of the application blank required the disclosure. If the failure to make such truthful answers had occurred only once the explanation that he misinterpreted the question (Appellant's App. 31-32) might be credible. But it is less plausible in view of his making the same answers under oath in three applications. It is difficult to believe that, the matter having been brought to his attention on three separate occasions, no doubt entered his mind as to the correct meaning of the statement he was subscribing under oath. While the requirement that an applicant make in his application a full disclosure of charges filed against him calls for a high degree of frankness and truthfulness, no good reasons present themselves why such a standard of integrity should not be required. *Spears v. State Bar, supra.*

His attempts at justification of his actions in the Patent Office matter and of his specious defense in the rent case, in the hearing of March 8, 1940, and continuing to his "Answer" of February 24, 1942, are in themselves proof of his unfitness to practice law. His record before the Committee established that he failed to conceive the nature of the duties of an attorney at law and had no proper conception of the ethics of the profession, and required the Committee to withhold a favorable recommendation.

Appellant Was Given Fair Hearings Before the Committee.

A review of the proceedings before the Committee (Record 38-123; Appellees' App. 1-43) shows that appellant had fair and full hearings. The Committee's proceedings are necessarily of an informal nature, and not bound by strict rules of evidence, the object being to permit both Committee and applicant to have ample opportunity to elicit all the facts in connection with the matter under investigation. Appellant was treated with courtesy, and there was no abuse or ridicule. The disconnected quotations from the proceedings in appellant's brief, pp. 8-9 and Appellant's App. 49-50 should be read with their context (Appellees' App. 3-6, 27-34), in order to show what transpired.

It can hardly be argued by appellant that he would have testified under oath before the Court to facts different from those testified to before the Committee. Further, he had his opportunity at the hearing on his complaint, March 3, 1942, to present testimony in open court, and under oath, and with due regard for the rules of evidence, but he chose to absent himself and to leave the case in the hands of his counsel (Appellant's App. 37).

**Appellant Failed to Establish the "Good Moral Character"
Necessary to Admission.**

Of the four cases cited on p. 10 of appellant's brief, the first was a seduction case which construed the statutory words "of previous chaste character". The second and third were murder cases in which the dangerous and blood-thirsty character of the deceased was in issue. In the fourth case a lawyer was disbarred for lack of "good moral character" as a condition precedent to the right to practice, although the wrongful acts charged did not constitute crimes.

Appellant's contention appears to rest primarily upon his opinion of himself, and that of the persons making the affidavits submitted by him (Appellees' App. 3, 26-27) that he is a man of good general reputation and therefore fit to practice law. But a present good reputation is not the only qualification for admission of a person to the legal profession. Appellant's actions and his attempted justifications thereof indicate a mental obliquity which makes him unfit for such admission; and the evidence shows such a lack of moral perception as to render the Committee and the Court unable to say that he possesses the necessary upright character to entitle him to admission.

In the opinion in *Matter of Rouss*, 221 N. Y. 81, 116 N. E. 782, Mr. Justice Cardozo said:

"Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards (cases). Whenever the condition is broken, the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness."

It was said in *In re Weinstein*, 150 Or. 1, 42 P. (2d) 744:

“The petitioner attempted by numerous witnesses to prove that his general reputation was good in the community of his residence. * * * Character and reputation are distinct. Reputation is the opinion generally entertained of a man, while character is what he really is. The preponderance of evidence produced by the petitioner as to general reputation * * * tended strongly to prove that he was a man of good reputation. The evidence which was produced by the relator as to specific instances of moral defection went to show the character of the applicant and tended to prove that it was not of that high type believed to be essential in a member of the bar.”

Gauged by the requirements of the foregoing cases, appellant has failed to establish such qualifications as to character as to warrant his admission to the bar of the Court.

CONCLUSION.

It is respectfully submitted that the judgment of the District Court was proper and should be affirmed.

WALTER C. CLEPHANE,
843 Investment Building,
Washington, D. C.,

JOHN E. LASKEY,
509 Albee Building,
Washington, D. C.,
Counsel for Appellees.

APPENDIX



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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8324

MILTON G. CARVER, *Appellant*,

v.

WALTER C. CLEPHANE, AS CHAIRMAN AND MEMBER OF THE COMMITTEE ON ADMISSIONS AND GRIEVANCES, DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, AND OTHER MEMBERS OF THE COMMITTEE, *Appellees*.

Appeal from District Court of the United States for the District of Columbia.

APPENDIX TO BRIEF FOR APPELLEES.

EXCERPTS FROM EXHIBITS DESIGNATED BY APPELLEES.

39 The District Court of the U. S. for the District
 of Columbia

Committee on Admissions and Grievances

No. 8731

In the Matter of the Application of MILTON G. CARVER for a rehearing of his application for admission to the Bar of The District Court of the United States for the District of Columbia.

Washington, D. C., Friday, March 8, 1940.

Pursuant to the application of MILTON G. CARVER as aforesaid and to notice theretofore given, a hearing was held by the Committee on Admissions and Grievances at Suite 843, the Investment Building, Fifteenth and K Streets, Northwest, in the City of Washington, District of Columbia, commencing at two o'clock in the afternoon on Friday, March 8, 1940, the following named members of the Committee being

Present:

Colonel Walter C. Clephane, Chairman;
Honorable Ralph Given, Secretary;
Austin F. Canfield, Esquire;
A. B. Duvall, Esquire;
Edmund L. Jones, Esquire;
John E. Laskey, Esquire;
Edward Stafford, Esquire;
Vernon E. West, Esquire; and
Charles F. Wilson, Esquire; and there were

Present also:

Milton G. Carver, the applicant, in person, and by
Richard L. Merrick, Esquire, his counsel.

Thereupon, the following proceedings and transactions were had and testimony was taken:

40 *Proceedings, Transactions, and Testimony*

The Chairman: Mr. Merrick, we have given you the opportunity you desired to have a rehearing in the case of Mr. Carver. As Mr. Carver has probably already told you, he has had two appearances before the Committee, and on the occasion of the last appearance he stated he had presented to the Committee everything he desired to present, and left it to the Committee to determine whether, in its judgment, he was eligible to the Bar. The Committee decided, on the evidence before it, that he was not. We understand that he now desires to have a rehearing, and we will be very glad to listen to anything you have to present.

Mr. Merrick: If it is agreeable to the Committee we would like to submit at this time five affidavits as to character, conduct, and reputation of Mr. Carver during the past ten or twelve years. I might add that if additional evidence should be required, or desired, by the Committee, we can obtain it in the form of affidavits going back to practically Mr. Carver's boyhood days and, in view of the fact that he has had two previous hearings, and the Committee undoubtedly has examined him as far as they care to go, we believe the present additional evidence now submitted will establish the fact that Mr. Carver is, and has been, a man of good reputation during the past ten or fifteen years. One affidavit goes back seventeen years, another one goes back ten or twelve years and, in fact all of them go back prior to any occurrence on which the Committee possibly could base an adverse recommendation, or decision.

Does the Committee want to hear further from me
41 with respect to any particular matter in the record or out of the record?

The Chairman: No; we are very glad to listen to anything you have to say, Mr. Merrick.

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Mr. Merrick: * * * I would like to state—I am not familiar with the practice of procedure before the Commit-

tee, this being my first appearance—but I would like
 42 to say, in behalf of Mr. Carver, that he was referred
 to me by a friend, and that I made some investigation
 of his character before I would attempt to represent him in
 this proceeding.

I investigated to quite an extent the Patent Office matter,
 of which Mr. Carver has told the Committee, and concerning
 which he furnished me copies of all the records he could get
 his hands on. It is my understanding that that incident oc-
 curred some nine or ten years ago, before Mr. Carver had
 pursued the study of law, and at a time when he was engaged
 trying to make a living by practicing primarily in trade-
 mark practices; that in order to practice and represent cli-
 ents in the matter of trade-marks it is not necessary to pro-
 cure any registration in the Patent Office.

The incident out of which grew that exclusion order made
 by the Patent Office was one involving some correspondence
 with an attorney by the name of Willis, who, I am informed
 by Mr. Carver, had furnished, or sent to him, considerable
 trade-mark business, and that the trade-mark business had
 been handled by Mr. Carver in a satisfactory manner. There
 was then forwarded to him a patent application, together
 with a fee, and I am informed by Mr. Carver that the appli-
 cation was turned over to a duly registered patent attorney,
 together with the fee, and that Mr. Carver received, or ob-
 tained, no pecuniary benefit whatsoever out of that applica-
 tion. He was known, as I understand it, as a register of
 trademark applications.

Following that matter Mr. Carver had some correspon-
 dence with Mr. Willis, and, while I do not uphold his ideas in
 the matter, or condone it in the least, he wrote Mr.
 43 Willis suggesting a plan whereby Mr. Willis might
 procure somebody to be registrar in the Patent Office
 as being duly qualified to represent petitioners and author-
 ized to make application for patent. That correspondence
 came to the attention of the Patent Office in some way—I am
 not informed exactly how—and on it they based a complaint,

together with another, a charge that Mr. Carver was using on his letterheads the words "Solicitor of Patents" when he was not a registered patent attorney, or entitled to practice patent law business for fees.

Mr. Carver made some technical motions as to the first set of charges, and they were reframed. He has always felt, and I believe still feels, whether justifiably so, or not, that the proceeding there against him was one growing out of some animus of somebody concerning him personally, and that he was treated rather shabbily. I do not offer that as an excuse for his conduct, and he does not offer it now.

He sued to obtain a review of the exclusion order by an appeal to the then Supreme Court of the District of Columbia, and to act as his own counsel, which, I believe, under any circumstances is, perhaps, a mistake. In that proceeding, which occurred before Mr. Chief Justice Wheat, the contention of the Patent Office was sustained as soon as Mr. Whitehead had stated to the Chief Justice that the Patent Office had jurisdiction in the matter.

I might add that Mr. Carver has one unfortunate characteristic, and that is that he probably lacks considerable tact, but I think he has learned now properly to conduct himself not to irritate people or to rub them the wrong way.

44 The first interview I had with Mr. Carver impressed me in that manner. Since then, however, I have talked with him on a number of occasions, and have inquired of others concerning him, and I find that that is not his true demeanor. His manner of asking questions and talking indicates that he is rather abrupt and discourteous, but I am informed that he is not discourteous to his employees, is courteous to his superiors and, unless irritated, he is courteous to everyone else.

I am fully in sympathy with the matters facing this Committee in preventing admission to the Bar of men who are not properly equipped, either mentally or morally, to perform the duties of an attorney. I do not recommend any

practices to the Committee, or any action of the Committee unless I feel that action is proper.

On behalf of Mr. Carver, I want to say that my investigation has disclosed that he is a man of good character, lives with his wife, and bears a good reputation in the neighborhood in which he lives, in the department in which he is employed, and with those who know him well enough to formulate a definite opinion as to his character and reputation. I believe, like the doctrine relating to the dog who was entitled to one bite, that every man should be entitled to have an opportunity to present anything and everything in his defense, providing that offense does not involve moral turpitude.

Mr. Carver has been excluded from practice before the Patent Office, and I understand that, perhaps, is the only—
 45 if we may term it that—black spot on his entire career. I know of nothing else, and if there is anything else it has not come to my knowledge.

My petition, which, of course, was signed by Mr. Carver, filed here, presents to the Committee two different thoughts, or matters, for its consideration,

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The Chairman: * * * In your petition you state all matters were discussed and considered by the Committee, and the first one was the Patent Office proceeding, to which you have already referred, but you also referred to a judgment in the Municipal Court of the District of Columbia against petitioner involving rent under a lease for a period during which petitioner did not occupy the property involved, and I wondered if you had overlooked that.

Mr. Merrick: No, I didn't overlook it, Colonel. I probably should have mentioned it, but I considered it nothing reflecting on Mr. Carver's moral character. It is true it does reflect on his obligation for his rent, but I do not see how that could be held as a moral standard excluding him from practicing his profession, when I was recently informed that in Virginia there were some three or four hun-

dred lawyers on the relief rolls of that state, so that would not be evidence of a moral standard.

* * * * *

46 Mr. Jones: When this matter came before Chief Justice Wheat, I would like to know whether the Court considered the merits of the difficulties Mr. Carver had in the Patent Office, or whether the Court's decision was based on the fact that it could not review the factual questions presented to the officials in the Patent Office?

Mr. Merrick: Of course, Mr. Carver can answer that better than I can, but, as I understand it, he was supposed to be the moving party, but did not have a great deal to do, and was not permitted to do a great deal in the proceeding, and he felt it was an affirmance without due consideration of all the merits in the case before the Chief Justice; that he was informed as soon as the Patent Office had jurisdiction he could not go extensively into the merits.

How long did that proceeding last, Mr. Carver?

Mr. Carver: I believe I submitted mine in about
47 three minutes, and the Government in about five.

Mr. Merrick: Was that as long as the meeting lasted?

Mr. Carver: Yes.

Mr. Laskey: Mr. Carver, do you feel now that the Chief Justice did not give you a full opportunity to be heard, or to say anything you cared to say?

Mr. Carver: I wasn't very familiar with the Court's procedure, and I am certain I didn't know they assigned a time limit within which you are supposed to state your case, but I feel, being the plaintiff, you might say, in the case, that I didn't get an opportunity to fully state my case.

Mr. Laskey: Did you ask for time for further discussion?

Mr. Carver: No; I got no opportunity, because when the attorney for the Government finished stating his side of the case he put his papers in his brief case and walked out of the court room.

Mr. Laskey: My question is directed to the point whether you feel that the Chief Justice failed to give you full opportunity to state your case?

Mr. Carver: I never had a full opportunity to state my case, but I do not think it was because of any fault of the Chief Justice.

Mr. Laskey: Then you put it on the ground that if you didn't have a full opportunity to state your case, it was due to your failure to insist on having it?

Mr. Carver: Well, it came up because of my unfamiliarity with the procedure there, and not having an attorney to represent me.

48 Mr. Laskey: Well, you weren't denied an opportunity to state anything and everything you had to say that was pertinent to the matter before the Chief Justice at that time?

Mr. Carver: Well, the circumstances were such that I couldn't logically present my case because Chief Justice Wheat interrupted me two or three times to ask me a question, and that broke up the orderly presentation of the facts in the case, and then he turned to the other side and asked some questions and I never got a chance to talk further.

Mr. Laskey: Did you ask for a chance?

Mr. Carver: It was useless. I never asked because the attorney put his papers in his brief case and walked out of the court room and the next case was called up, as I remember it. Apparently Chief Justice Wheat considered the matter closed when he walked out of the court room.

Mr. Laskey: You were there, weren't you?

Mr. Carver: I was there.

Mr. Laskey: Did you seek an opportunity to express a desire to make a further statement?

Mr. Carver: No, I just stayed there, and then the next case was called up; I didn't get a chance to speak further.

Mr. Laskey: Did you ask the Court for an opportunity to reply to what the Government counsel had stated?

Mr. Carver: I didn't ask the direct question of the Court to reply to that. As I said, the attorney made the statements in the case and then he walked out of the court room.

Mr. Laskey: You said you didn't ask the Court. Did
49 you intimate in any way to the Court that you desired
an opportunity to make further statement?

Mr. Carver: Only by remaining there, without going away myself, to see what further instruction the Court might give me.

* * * * *

Mr. Canfield: Did you file a petition for rehearing, or perfect an appeal?

Mr. Carver: No, sir.

Mr. Canfield: Never asked for a rehearing under the rules?

Mr. Carver: No, sir, I didn't know you could have a rehearing.

Mr. Canfield: And you didn't take an appeal?

Mr. Carver: No, I did not.

Mr. Merrick: Did you have any reason for not taking an appeal?

Mr. Carver: Yes, sir, I did. I looked up the matter and talked it over with an attorney, and he said his charge would be \$800 to take it up on appeal to the D. C. Appeals Court, and I was unable to do anything with that.

Mr. Merrick: Have any further questions?

50 Mr. Stafford: At this point I would like to put in the record—Mr. Carver's file was assigned to me in accordance with the practice of the Committee, after Mr. Carver had passed the mental examination. As a part of my investigation I found this proceeding in the Patent Office, and that determined the subject of an investigation in the District Court.

The records of the Court were examined and the docket disclosed these entries, which I took off myself. The title of the case is "Re: M. G. Carver, miscellaneous Docket No. 2,

Supreme Court, D. C., page 4. Review of order of Commissioner of Patents in disbarment."

The title of the case is exactly this: "In re Milton G. Carver, 1835 K Street, Northwest, Washington, D. C., versus the Commissioner of Patents. The petitioner appears in proper person, and there are the following entries:

"October 22, 1931, a letter from the Commissioner of Patents forwarding the petition of Milton G. Carver for review of the order of disbarment before the Patent Office."

Same date, "petition for review."

"November 18, 1931, record of proceeding in Patent Office and deposit for costs, \$15."

"November 18, a motion of the petitioner for an oral hearing."

"November 18, set for December 9, 1931. Petitioner and Commissioner of patents notified."

"December 1, supplement to record of proceedings in the Patent Office."

51 "December 14, order containing exclusion sustaining the action of the Commissioner."

An examination of the files discloses that all the papers are on file as read.

* * * * *

53 Mr. Laskey: Mr. Carver, you produced three letters that you wrote to Mr. Willis, one dated February 5, 1931, one dated February 28, 1931, and the third dated March 13, 1931, the last one being marked "Confidential," and refers to it being a reply to his letter "of recent date." Have you Mr. Willis' letter to which this was a reply?

54 Mr. Carver: No, I don't have it. I never kept any of the letters Mr. Willis wrote me; I didn't consider them important enough.

* * * * *

Mr. Laskey: Have you any objection to these going in?

Mr. Merrick: No.

Mr. Laskey: One other question, Mr. Carver: Do you still think the scheme of action which you presented to Mr. Willis through correspondence was an ethical thing for you to have done?

Mr. Jones: May I interrupt? What was that scheme? Just explain what that scheme was, Mr. Carver.

Mr. Carver: The Patent Office's charge was that through handling patent applications I was to obtain Mr. Willis's registration with the Patent Office, but the fact of the matter is that that was a mistake, because the Patent Office gives an examination that you have to take before you can be admitted to practice before the Patent Office.

55 Mr. Canfield: Well, that isn't a complete explanation by any means, Mr. Carver. Can't you tell us more than that?

Mr. Carver: It is in that letter. Mr. Willis sent this case to me and I turned it over to a Patent attorney, and then he wrote me a letter that I don't have a copy of, asking me in a general sort of way what the qualifications were and how you could become admitted to practice before the Patent Office, and that letter had nothing to do with the Rich and Rich patent application that the Patent Office made one of the charges against me. In other words, there were two lines of correspondence, one there with Mr. Willis generally, and then there was another line of correspondence that had reference to the patent application that Mr. Willis sent me, but when the Patent Office filed charges against me the general correspondence that Mr. Willis and I had, that did not relate to any patent application at all, was used as a basis for the charges involved in the Patent Office.

Mr. Canfield: Do I understand you to mean that the only thing you were charged with was correspondence with a non-resident attorney, telling him how to become registered in the Patent Office? That isn't what you mean, is it?

Mr. Carver: That is the sum and substance of it. What Mr. Laskey is reading is hearsay as to some other case. I didn't mention it to Mr. Willis. I suppose I might have told

him names and mentioned that it was hearsay in another case, and then handled it as an original question.

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56 Mr. Jones: I don't know whether any member of the Committee ever read those letters except Mr. Stafford and Mr. Laskey. I think perhaps it would be well to read them out loud to the Committee at this time.

* * * * *

The first one, dated February 1, 1931; the next letter dated February 28 on the same letterhead; the next letter is March 13, 1931, same letterhead, marked "Confidential."

(Thereupon Mr. Jones read to the Committee the letters above referred to.)

Mr. Merrick: Before you go any further, Colonel, I want to correct my original statement. I was under the impression that Mr. Carver had not studied law prior to writing those letters. I correct that statement because now it appears that he had studied law for two or three years prior to the date of the letter.

57 Mr. Carver: The law I referred to was just patent law.

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Mr. Laskey: * * * Mr. Carver, do you still consider that the scheme, if I may so term it, that you set out in that confidential letter to Mr. Willis was entirely ethical and proper?

Mr. Carver: No, sir, but I would like to qualify that statement; that scheme, as it was called, of the Patent Office, is what came to me as hearsay and, as I understand, is what happened in somebody else's case, and they had obtained a patent along those lines, and the Patent Office found it out, and I just stated in the letter to Mr. Willis—I didn't mention any names, and I didn't suggest it was hearsay, but it never happened in this case because I never handled that patent application.

Mr. Merrick: May I ask one question there: From whom did you obtain that information with reference to what occurred in another case?

Mr. Carver: I don't know; that was quite a few years ago and I fail to recollect where I heard it, but I think I verified it later, and that is what really happened in another case, that the Patent Office merely withdrew the registration. They hadn't questioned the party in question working in a patent attorney's office for the request, after two or three years, and a patent attorney's certificate was obtained, and then it was proved he was incompetent and the Patent Office withdrew the registration, didn't disbar him
58 but said, "You can't practice any more before the Patent Office."

Mr. Laskey: Mr. Carver, at the time you conceived that plan set out in the letter, or if you didn't conceive it, at the time you adopted it and made it your own, as set out in the letter, did you think that was an ethical and proper thing to do?

Mr. Carver: At the time, Mr. Laskey, I didn't consider the propriety of that so-called scheme; I just seized upon it as hearsay that I had heard in another case, and I mentioned it to Mr. Willis, but it subsequently developed that it couldn't happen, and never did happen. The Rich and Rich application I turned over to another attorney, who prepared it, and, for that reason, I couldn't have anything to do with Mr. Willis' registration being entered by the Patent Office.

Mr. Laskey: But your scheme, though, was to have him entered as attorney in cases which were to be handled, and then have him certify that for a period of over three years he had handled patent cases and was entitled to handle cases before the Patent Office?

Mr. Carver: That was the precedent I stated in some other person's case.

Mr. Laskey: That was your plan, wasn't it?

Mr. Carver: It might look so in the letter, but it was stated as precedent in some other case, but it was never followed up in Mr. Willis' case.

Mr. Laskey: Isn't it a fact that it wasn't followed up in Mr. Willis' case because Mr. Willis, on receipt of this letter from you marked "Confidential," wrote to the Patent Office about the matter?

59 Mr. Carver: No, I couldn't say that, because there was only one application, and I turned it over to a registered attorney, and the registered patent attorney I turned it over to said he would write to Mr. Willis for associate power of attorney to prosecute the case, and then the letter became lost, or something, I don't know, and, as I understand, Mr. Willis became panicky and sent the letters to Mr. Babcock, who took them to the Commissioner.

Mr. Laskey: Who is Mr. Babcock?

Mr. Carver: He is a patent attorney in the Washington Loan Building.

Mr. Jones: When did you employ this other attorney?

Mr. Carver: After I got the application back, after the search showed the invention wasn't satisfactory; Mr. Willis returned the papers, and fees, and so on, and I turned those all over to Mr. Woodward, who had an office across the hall from me at the time and was a registered D. C. member of the Bar.

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62 Mr. Jones: I want to call your attention to the March 13 letter, in which you say this: "I have always sent out ethical letters soliciting patent and trademark business and would like to continue to do so, and some time ago when I applied to be registered at the Patent Office, I found that I would not enjoy this privilege, so did not carry the matter any further, although I am entitled to be registered, having had about six years in the office of two registered patent attorneys and completing three years of law school, two of which were patent attorney

courses," which is the part I want to ask you about. Now, when this question came up of your applying to the Patent Office to be registered you say you were not permitted to enjoy that privilege.

Mr. Carver: And so I resigned from Government service.

Mr. Jones: I didn't mean to be asking you about that.

Mr. Carver: The day I went into business, maybe three or four years before this, the feeling arose in the Patent Office.

Mr. Jones: Why were you not permitted to be registered then, sir?

Mr. Carver: I resigned from the Government, and
63 the Chief Clerk told me I couldn't be registered and continue working with the Government, and I resigned, and he asked me if I was a member of the Bar and I told him no, and he wouldn't even give me special privilege to practice.

Mr. Jones: You say here you were eligible to practice. Were you eligible?

Mr. Carver: I considered I was.

Mr. Jones: But he turned you down?

Mr. Carver: He turned me down on that one question. He asked me if I was a member of the Bar and I said no, and he said, "If you are not a member of the Bar, or hold an engineering degree, you are not eligible to practice."

Mr. Jones: If you knew all this why did you write Mr. Willis you were eligible?

Mr. Carver: Because I considered I was.

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64 Mr. Merrick: In your letter you mention sending out some letters soliciting patent cases. Did you actually do that?

Mr. Carver: Yes, sir.

Mr. Jones: Did he say yes?

Mr. Stafford: He said he sent out ethical letters soliciting trademark and patent business.

Mr. Carver: Yes, sir, I sent them out. If you weren't a registered patent attorney you could send them out at that date, but not now, because they say if you solicit any business and you are not registered by the Patent Office it is a misdemeanor.

Mr. Merrick: Now, did you know at that time whether it was the practice of anybody who was not registered in the Patent Office to practice there to send out letters similar to what you did?

Mr. Carver: Yes, sir, I do; I went pretty far; I went up to the Congressional office and found out that there
66 were 110 people who held themselves out, showing that it was common practice and not unethical to do it.

Mr. Merrick: Were those 110 registered or not registered?

Mr. Carver: They were not registered because I checked up their names in the file. Of course, they might have been subsequently registered; and I asked them why they picked me out when there were 110 who were doing it.

Mr. Jones: Who brought this matter against you?

Mr. Carver: It happened in this way: Mr. Willis sent the correspondence to Mr. Babcock for a report, and instead of making the report Mr. Babcock took them to the Commissioner of Patents, and then these charges grew out of those three letters.

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67 Mr. Merrick: Mr. Carver, you were asked by Mr. Laskey whether or not at the time you submitted the proposed scheme to Mr. Willis you thought it was ethical and, as I understand it, you replied you hadn't given much consideration to the propriety of that plan. What would you say about it now?

Mr. Carver: Well, I meant that I didn't consider it much, as to whether it was proper, or not, because it was something that happened, as I understand it, from hearsay, in another case, and you could cite just like you did any other

law precedent, if you were handling a criminal case, without being a party to the scheme.

Mr. Merrick: Could you do it today?

Mr. Carver: Oh, no.

Mr. Merrick: Would you do it today if you could?

Mr. Carver: Oh, no; if I got it I would send it to a patent attorney.

Mr. Laskey: Has the rule since this been changed?

Mr. Carver: No, my attitude has changed, but I think the Patent Office resented that I didn't let them reply to Mr. Willis' letters. If I remember right I think he sent me a letter asking, "What do I have to do to get registered in the Patent Office?" That is all he said. I wrote him about three pages because he was a pretty good friend of mine at that time, I thought.

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73 Mr. Jones: Mr. Carver, how long was Mr. Woodward in your office?

Mr. Carver: He wasn't exactly—he was in the room with me, and he was there about a year and a half altogether.

Mr. Jones: How long had he been in your office before he became registered, or shared office space with you?

Mr. Carver: I would have to answer it this way: the last office was in Mr. Woodward's name, but I paid the rent.

Mr. Jones: And how long did he and you share office space together?

Mr. Carver: A year and a half.

Mr. Jones: And when he became registered and moved across the hall, when was that?

74 Mr. Carver: Before the ink was dry on his register certificate, he moved.

Mr. Jones: And when you were together I suppose you both had your names on the door?

Mr. Carver: I had my name on the door, that's right, and he did.

* * * * *

Mr. Jones: What did you have under your name?

Mr. Carver: I had on my door "Copyrights, Patent and Trademarks," and then both our names were on the door, and the day he got registered he took the front of the door out and moved out.

Mr. Jones: He didn't leave your name on, did he?

Mr. Carver: I scratched my name right off.

Mr. Jones: Mr. Carver, why did you say on your letter-head "Solicitor of Patents"?

Mr. Canfield: When he wasn't registered?

Mr. Jones: When you weren't registered?

Mr. Carver: Because 110 other people used it, and my information was that I had a right to use it. There
75 was no law against it.

Mr. Jones: Although you had been denied registration?

Mr. Carver: No, I hadn't been denied registration. I had never tried to be registered exactly. I merely went down there and found out what was necessary to be done to be registered, and when I found out you couldn't even send out a letter for trademark searches I wouldn't attempt to carry it any further.

Mr. West: You went down to inquire about special registration at that time and they told you you couldn't unless you were a member of the Bar, or had an engineering degree?

Mr. Carver: I didn't know that until I did inquire.

The Chairman: Is that what you referred to in your letter of March 13 when you said, "some time ago when I applied at the Patent Office I found that I would not enjoy this privilege"?

Mr. Carver: That wasn't in the letter. This privilege meant if you weren't registered you couldn't solicit even trademarks, because that is what the Patent Office did to keep it under control. There was no law against it but if you went in there and said you were registered and they found out you weren't registered, they would do as they

said to me, "You can't solicit any business because you are not registered, and you can't solicit under your qualifications, and if you ever do solicit any business and you come up to be registered in the Patent Office we will use it against you."

The Chairman: Then, as I understand it, you applied for registration and were turned down?

Mr. Carver: I never applied for registration and
76 was turned down.

The Chairman: You say in your letter to Mr. Willis, "some time ago when I applied to be registered at the Patent Office I found that I would not enjoy this privilege."

Mr. Carver: The wording of that letter might be a little carelessly worded. I never applied for registration, as I say. I wrote that letter there—well, the language I used was just kind of careless language; I never applied for registration. I just went down there to find out what the requirements were if I wanted to be registered.

The Chairman: Then the language in that letter isn't strictly true?

Mr. Carver: It doesn't turn on the question of strictly true; it just wasn't good language.

The Chairman: Well, will you answer that question, Was it true, or not?

Mr. Carver: I hadn't filed, no.

The Chairman: In other words, you had filed no formal application for registration; is that correct?

Mr. Carver: That is right. I went down there to find out what the requirements were, and when I found out what the requirements were I didn't carry it any further.

The Chairman: Do you want us to understand when you wrote this letter that you had ability?

Mr. Carver: Oh, no; I mean I considered myself to be admitted to practice, and I had gone down there and found out what the requirements were and when I had found out what they were I didn't carry it any further. In other

words, I applied to the Commissioner to register to practice before the Patent Office; that is one construction
77 that could be put on it.

The Chairman: Now, will you tell us, Mr. Carver, why you labeled this letter of March 13 to Mr. Willis "Confidential"?

Mr. Carver: I don't know; I just put that on there. I put that on several letters that were not confidential. I had never had any business experience before, and everybody starting right out like that is bound to slip up on one or two details.

The Chairman: Was there any reason why you should label the letter of March 13 "Confidential" when you hadn't labeled the other two letters of February 5 and February 28 "Confidential"?

Mr. Carver: No, not a bit; it could have been put on or left off. I didn't attach any importance to that.

The Chairman: I understand you don't now consider the scheme, to use the word suggested by Mr. Laskey, outlined in these two letters as ethical?

Mr. Carver: If you want my opinion today on it, under the circumstances as I know they are today, I can only give my opinion, and my opinion is it would not be good today; it would be bad then, and under the law it would be a misdemeanor.

The Chairman: And that is because you think there has been a change in the law since then?

Mr. Carver: I know there has been a change, and I have been through law school since, and studied D. C. accounting and legal ethics, and I think it was very poor advertising at that time, and I wouldn't do it today.
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The Chairman: Now, since you have changed your views on the subject have you renewed your application for registration in the Patent Office?

Mr. Carver: No, sir, because I have never been registered.

The Chairman: Have you ever made an application to be registered?

Mr. Carver: No, sir.

The Chairman: Why didn't you do that?

Mr. Carver: Because I never intended to handle patents, and not having any use for it I wouldn't put in the application.

The Chairman: And having been denied the privilege of practice in the Patent Office, and since then having had a change of view with reference to what constituted ethical conduct, you didn't consider it wise to make application for registration?

Mr. Carver: I never gave the matter one thought, Mr. Clephane. I was more interested in going back into the Government service, where I am, and staying there permanently, and working up perhaps to one of the attorneys in the Government department.

As the result of the publication of my name in the official gazette of the Patent Office, that ended my business with all patent and trademarks, because I was doing quite a bit of work, search work, for attorneys, and they wrote in and wanted to know what it was, and I told them, and the mere
79 fact that you had been excluded from practice was the controlling thing, and they withdrew their work.

The Chairman: Having experienced this change of heart which you indulged prior to your declaring to practice in the Patent Office, don't you think it would be worth-while to try to restore your good name by filing application to practice there?

Mr. Carver: I suppose it could be done; in fact, I did do it. I requested a rehearing down there on the merits of my case just about two months ago, and they said I didn't give any reasons for having a rehearing granted to me, and they practically said the matter was *res adjudicata*.

Mr. Laskey: Did you tell them when you made this recent application that you had experienced a change of heart when you made the application?

Mr. Carver: Yes; I wrote them what I thought was a pretty good letter, and they said—Mr. Merrick has a copy—and they said I didn't give any reasons as to why I should be given a rehearing. I mentioned this, that I didn't like this old matter that happened ten years previously to be brought up and considered, like something that had recently happened, like when you had my application before the Committee to be admitted to the practice, that I didn't think they should bring up something that happened that made me put on the appearance of a juvenile delinquent.

The Chairman: Did you mention in your application to the Patent Office anything about having been denied admission to the bar?

Mr. Carver: Only indirectly. I think later there I said I wanted to clear it up so I could remain permanently
80 in the Government and perhaps be an attorney in the Government. I have forgotten the exact details.

The Chairman: And even in view of that the Patent Office declined to grant your application to reopen your case?

Mr. Carver: They said I would have to give reasons as to merit.

* * * * *

The Chairmain: Mr. Carver, I must have misunderstood you when I first began to question you along this line; I understood you had made no application to the Patent Office for registration there. Did I not understand you correctly about that?

81 Mr. Carver: No, sir; I stated I made an application for hearing and that it had been refused.

The Chairman: Yes, but that wasn't stated at first in response to my question and I wondered whether you misunderstood me or I misunderstood you in answers you gave to questions along that line.

We will take a short recess.

(Thereupon recess was taken, after which the following occurred:)

The Chairman: Mr. Carver, I would like to refer to the mention which you made in your petition on page 2 of the judgment of the Municipal Court against you, involving rent due under a lease. Can you give us the approximate date of that judgment?

Mr. Carver: Yes, sir; it was gotten about eight years ago.

The Chairman: What was the amount of it?

Mr. Carver: \$150.

The Chairman: And it has carried interest, I suppose, for eight years?

Mr. Carver: Carried interest for six years, all right, but it never was docketed, so it expired after six years.

* * * * *

The Chairman: But it never was paid, was it?

Mr. Carver: No, sir. I believe I mentioned that in
82 detail at the last hearing. The sum and substance of it was that after I went down there about five or six times for a hearing, the judge called upon the attorney to produce the deed and he couldn't—

Mr. Merrick (interposing): The lease, you mean?

Mr. Carver: The lease, and he couldn't, and I contended it was a tenancy at sufferance, and that the thirty days in this clause released me of liability inasmuch as the attorney never could produce the lease.

The Chairman: But, notwithstanding your objection, the judge gave judgment against you?

Mr. Carver: There was a default judgment. As I say, I went down there five or six times, and every time they postponed it, and I got tired of going there.

The Chairman: And finally you gave up going?

Mr. Carver: Yes, sir.

The Chairman: And so during your absence the judgment was entered against you by default?

Mr. Carver: That is right.

The Chairman: Now, you had no intention of paying the judgment, did you?

Mr. Carver: As a matter of law—

The Chairman (interposing): That isn't the question. The question is whether you intended to pay the judgment?

Mr. Carver: No, sir, because the notice I gave released me of liability. I was a tenant at sufferance, and I gave them thirty days' notice, and I had a good defense, but I never got an opportunity for trial on the merits.

Mr. Laskey: When did you first learn that there
83 was a judgment against you by default?

Mr. Carver: I think I received the regular communication of the Municipal Court stating that a default judgment had been given.

The Chairman: Did you make any effort to have that set aside?

Mr. Carver: Last week I dropped into the office of the attorney who is now handling the estate of the man for whom the judgment was gotten, and I mentioned something to him about settling the matter and, although it had been outlawed for a cople of years, that arrangement could be satisfactorily made to settle it.

The Chairman: You haven't answered my question yet: Did you make any effort to have that default judgment set aside?

Mr. Carver: No, sir.

The Chairman: Why didn't you go in to see him before last week and make an offer to settle?

Mr. Carver: I had been in a couple of times. I was in, I guess, a year ago, and I thought the amount he wanted was all out of proportion to the true amount I owed.

The Chairman: You preferred to ignore the judgment of the Court and set up your own view of the matter in its place, then?

Mr. Carver: No, sir; I contended, as I do now, that I am not trying to justify the decision of my stand in the matter in the light of the judgment that has been given, but I do say if I had been there and put in my defense, it was a good defense of a tenant at sufferance.

The Chairman: Did you ever appeal?

84 Mr. Carver: No, sir.

Mr. Merrick: Did you consider that you owed the rent, Mr. Carver, that was claimed was due under this lease?

Mr. Carver: No, sir, because I gave the thirty days' notice.

The Chairman: Who was the attorney you went into settle with?

* * * * *

Mr. Carver: Ottenberg.

The Chairman: Louis Ottenberg?

Mr. Carver: Yes, sir.

Mr. Merrick: Do you know who was the owner of the premises you occupied at that time?

Mr. Carver: Yes, sir, the landlord was Mr. Ellis. He is now dead. He had a rental agency at Higbie and Richardson.

* * * * *

85 Mr. Jones: Did you have a lease, Mr. Carver?

Mr. Carver: Yes, sir, there was a lease.

Mr. Jones: For a definite time, for a year, six months, or something like that?

Mr. Carver: It was for a year.

Mr. Jones: Did you leave, or give up the premises before the year?

Mr. Carver: Yes, sir, I gave the thirty-day notice.

Mr. Jones: How do you feel you had an equitable defense and were a tenant by sufferance if the lease ran for a year?

Mr. Carver: The lease had a mutual covenant; it wasn't signed by the opposite party, and I was in as a tenant by sufferance because it wasn't a valid lease.

Mr. Jones: Was it signed by Richardson and Higbie?

Mr. Carver: No, sir.

Mr. Jones: It wasn't signed by anybody.

Mr. Carver: No, sir, and I recited it to Judge Cobb and he said that I was entitled to a hearing on the merits, and I thought that there would be a trial.

* * * * *

86 Mr. Merrick: Have you been financially able to satisfy the judgment since it was rendered against you?

Mr. Carver: No, sir, I have not been able to at any time.

The Chairman: Why did you go in, then, to see the attorney with reference to paying it?

Mr. Carver: Well, I went in there the other day and I told him I would pay \$4 if I could get a release, just to clear it off the records.

* * * * *

The Chairman: Any other questions?

Mr. Carver: But the reason I went in to get that release for \$4 was because I figured that was all I owed; I didn't really owe that, but I just wanted to clear the moral
87 obligation, because I had a good defense in the first place.

* * * * *

The Chairman: Any other questions, gentlemen?

Mr. Merrick, is there anything else you want to submit by way of matter of fact?

Mr. Merrick: Have you anything else, Mr. Carver, that you want to submit, any statement of fact that you want to make to the Committee?

Mr. Carver: No, sir, that is all.

Mr. Merrick: I might ask as to whether or not it would be desired by the Committee that those affidavits be read, or whether just filing them is sufficient?

* * * * *

88 It might be well to read them if you have the patience to listen. I know some of you are busier than I am.

(Thereupon Mr. Merrick read to the Committee the affidavit of Lester L. Sergent.)

Mr. Merrick: I might add that was prepared by Mr. Sergeant himself.

The next one is Mr. Roger O'Donnell.

(Thereupon Mr. Merrick read to the Committee the affidavit of Roger O'Donnell.)

Mr. Merrick: I might say that Mr. Carver prepared that affidavit and it was signed by Mr. O'Donnell.

George Schoolmeester.

(Thereupon Mr. Merrick read to the Committee the affidavit of George Schoolmeester.)

Mr. Merrick: That affidavit, likewise, was prepared by Mr. Caver, that is, the body of it.

Affidavit of Doctor M. Burtrum Crabill.

(Thereupon Mr. Merrick read to the Committee the affidavit of Doctor M. Burtrum Crabill.)

Mr. Merrick: And the affidavit of Doctor John R. Dull.

89 Thereupon Mr. Merrick read to the committee the affidavit of Dr. John R. Bell.

* * * * *

90 If there are any further questions the committee has in mind that they want to ask either Mr. Carver or myself, we would be glad to answer them the best way we can.

Mr. Canfield: I would like to ask some more questions. This is on the judgment, Mr. Chairman.

Mr. Carver, who was the attorney you went to see to try to get rid of this judgment?

Mr. Carver: Mr. Ottenberg.

Mr. Canfield: Did you go to see Mr. Partridge?

Mr. Carver: Mr. Partridge was the man who handled the judgment.

91 Mr. Canfield: I didn't ask you that; did you go to see him?

Mr. Carver: No, sir, he is not handling it now.

Mr. Canfield: How did you find that out?

Mr. Carver: I called up Richardson of Higby and Richardson about a year ago and he referred me to Ottenberg.

Mr. Canfield: Who is the attorney you went to see a year ago that you told him what he wanted was excessive?

Mr. Carver: That was Ottenberg.

Mr. Canfield: You fix that at over a year ago?

Mr. Carver: It wasn't over a year ago; I think I called him up over the phone and asked him and he said \$75.

Mr. Canfield: Are you sure of that name?

Mr. Carver: Yes, I am pretty sure.

Mr. Canfield: But it is important. He never heard of you, never knew of you, never heard of this case until last week. That is what he said. We can bring him down if it becomes necessary, that you walked in last week and told him about this judgment, and that there was a matter pending that required you to get rid of the judgment, that the statute of limitations had run and that there was no way to force you, and you offered him three dollars for it and raised hell because he wouldn't take it. Now, that is what he just told me.

Mr. Carver: Well, I went in his office, and I didn't raise any "h"; and I mentioned the statute of limitations because I made a search of the records of the Supreme Court one day when I was down there, when I saw the file wrapper in the case, and it had not been recorded.

92 Mr. Canfield: There was another thing, he said that you offered him three dollars but that there wasn't anything that they could do about it.

Mr. Carver: I never did.

Mr. Canfield: And that it was necessary to have it lifted, and he said, "Old man, if that is true why worry me about it? There is no way of fixing it, why do you come in and make this generous offer of three dollars?" and you said it was necessary to have it lifted, that it was of importance to you, and you gave him the data and also Mr. Partridge's name.

Mr. Carver: He asked for it.

Mr. Canfield: And he told you he would look up the judgment in the court, but that he had no knowledge of it at all. That is what he told me transpired in a rather hurried way. Now, why did you offer him three dollars? What did you have in mind?

Mr. Carver: After I was given a hearing down here a couple of times the question of this judgment always came up, and I didn't feel I owed it, as I told Chairman Clephane a few moments ago, and that although I didn't owe it, on the record, I would clear the record for three dollars, but I didn't feel it justified going beyond that, that it was just a matter of clearing the record, and the purpose of doing it was because, as I stated here before this committee on one of the other hearings, I would discharge that obligation if I had to.

Mr. Canfield: Now, what do you say about his statement that he never heard of you, or about this case, and
93 never had a conference about the case? As a matter of fact, you had to tell him all about it and that you saw an attorney a year ago.

Mr. Carver: I never talked to Partridge.

Mr. Canfield: Who is the attorney you talked to?

Mr. Carver: I talked about a year ago to Ottenberg and about seven or eight months ago I went in there and he was away and I talked to his secretary.

Mr. Jones: Who was Partridge?

Mr. Canfield: What do you suggest, Mr. Chairman?

The Chairman: I would suggest that we have Mr. Ottenberg come down.

Mr. Canfield: Mr. Ottenberg said you offered him this money and rather pressed him—

Mr. Carver (interposing): I didn't offer him any money.

Mr. Canfield (continuing): —to take that three dollars.

Mr. Carver: I wanted to know if he would entertain a release, the statute of limitations having run against it, and I didn't know what kind of a release he could give me, I didn't know how to handle the matter. I was inspired by the best of motives in going up there.

Thereupon **Louis Ottenberg** appeared before the committee and the following occurred:

The Chairman: Mr. Canfield, will you examine Mr. Ottenberg?

94 Examination by Mr. Canfield

Q. Mr. Ottenberg, how long have you been a member of the bar? A. Nearly twenty-nine years.

Q. Are you attorney for Higby and Richardson? A. No, sir.

Q. In what actions are you engaged with them if any? A. None, sir.

Q. Have you recently discussed with them the matter of a judgment against one M. G. Carver? A. Mr. Canfield, the only thing I know about any judgment is, my answer would be that within the last ten days, it may have been less time than that, certainly not more than ten, that gentleman came in, I think that is Mr. Carver.

Q. Pointing to this gentleman here (indicating Mr. Carver)? A. Yes, that looks like him, and said I was one of the executives, or owner, of the Wilson apartment house, and said Richardson—Higby and Richardson had gotten a judgment against him some eight years before, and I said I didn't represent the executors, and he said, "No, I know that, but I want to get it straightened out and I will give you three dollars for it," and I said, "Why three dollars? If it is no good you ought not to pay it, but why wait all these years? But I will look into it."

Q. Just a minute. At that time was anything said about why he wanted this judgment lifted? A. No, sir.

Q. Or why it was necessary to have that judgment
95 lifted? A. No, sir; so I wrote on this memorandum I made "Higby, Richardson, and Partridge, attorney, about eight years ago, \$150, M. G. Carver, 1830 K Street, Northwest, National 9086."

Q. Now, state whether or not so far as you can recall, Mr. Carver or anybody answering that name called you on the phone in the last week and offered to settle this judg-

ment, and you said, "I will take seventy-five dollars"? I will ask you whether or not that occurred. A. No, sir, it did not occur and couldn't occur. I couldn't make arrangements on a settlement about which I knew nothing and furthermore I am co-executor with the Washington Loan and Trust Company. I told him I would turn it over to Mr. Zimmerman, a young man in my office, to go down and investigate it, and I just got this slip of paper that I had had the notes on to investigate it.

Q. Did you make any indication to him that you would be interested in taking three dollars? A. I made no indication that I would be interested in three dollars.

By Mr. Merrick:

Q. Did you say to Mr. Canfield when he went down to see you a few moments ago that there was a judgment against him which he wanted lifted? A. I don't recall it. I will put it this way: Mr. Carver didn't say definitely why he wanted it, but that he wanted to get it out of the way.

Q. Did he use the word "lift"? A. No, frankly I
96 can't answer that because I was in a big hurry.

Mr. Canfield: I might say this, that I am only talking about, perforce, the import of our conversation; I didn't mean to say that he used the word "lift."

Mr. Merrick: My reason for using it was that you used it on two occasions, and I thought it was the result of your conversation with Mr. Ottenberg.

Mr. Ottenberg: Let me make this clear.

Mr. Merrick: It is clear to me now.

The Witness: That this just happened, and I think Mr. Carver will bear me out, that I was in a big hurry and I stepped back into my office and put it on this paper, and I said, "Why is this thing important? If it is no good it is no good," and he said something about "I want to get it off of the record."

By Mr. Merrick:

Q. Did you say to Mr. Canfield that he raised hell about it?

Mr. Canfield: Well, I didn't say—

Mr. Merrick (interposing): Just a minute, Mr. Canfield, you are on record in this case.

By Mr. Merrick:

Q. Did you tell him that Mr. Carver raised hell in your office about the three dollars? A. No.

Mr. Canfield: The impression I got from Mr. Ottenberg's conversation was that Mr. Carver tried to get him
97 to take three dollars, and that it was important to get it lifted off the record immediately, and that he was raising hell—however, here is his testimony for whatever it is worth.

Mr. Merrick: Then why was it necessary for you to tell this committee that he replied that Mr. Carver raised hell down there because he wouldn't take the three dollars?

Mr. Canfield: I didn't say that he did.

Mr. Merrick: But I think I got that impression, and I think the committee also got that impression that he did. That is all.

Mr. Carver: Mr. Ottenberg, you have a young lady secretary?

Mr. Ottenberg: Yes, sir.

Mr. Carver: And if there had been any hell raised you would have known of it?

Mr. Ottenberg: Mr. Carver, I don't remember just where I was, but I know you—my recollection is I had my hat and overcoat on, and we got out in the lobby and we talked there less than a minute, and then you came into my room, which is at the end of my lobby, and I picked up this little piece of paper, which is in a thing I have on my desk, and I very, very distinctly remember asking you why three dollars.

Mr. Carver: Yes, and I just said, "Well, you can say any amount."

Mr. Ottenberg: No, you didn't say any amount. I said, "Why only say three, four, or ten dollars? Why fifty cents?"

Mr. Carver: Yes.

Mr. Ottenberg: I remember that very distinctly,
98 and I also asked you why it was so important to get rid of it, and frankly I thought you were evading it and if the thing was barred by the statute of limitations I didn't give a darn whether you did pay it.

By Mr. Merrick:

Q. Do you keep a memorandum or record of your phone messages? A. Not unless he leaves a call for me to call him.

Q. If he had called you a year ago would you remember it? A. I don't remember, but nothing was ever said about seventy-five dollars a year ago, or at any other time.

* * * * *

Mr. Laskey: Mr. Carver, will you tell us more
99 of the substance of your conversation with Mr. Ottenberg when you did see him?

Mr. Carver: I came up to his place recently, I forget the exact date, and I stated that a judgment had been gotten against me quite a few years before and that I would like to pay three or four dollars, something like that, to release it, and I had in mind the fact the committee here wanted me to discharge that in some way, and as I had already gone on record as saying I didn't owe the whole thing—

Mr. Laskey (interposing): I just asked you what you said to Mr. Ottenberg, not what you had in your mind.

Mr. Ottenberg: He didn't say anything about a committee to me, did you, Mr. Carver?

Mr. Carver: No, sir, I didn't say anything about a committee because you weren't my attorney; and I stated I would like to pay three or four dollars to get a release, and he said he would look it up and let me know. I was only up there about a minute and a half.

Mr. Merrick: Did you give Mr. Ottenberg the information on that slip?

Mr. Ottenberg: Didn't I write that down on this paper when you were there?

Mr. Carver: Yes, sir.

Mr. Ottenberg: Do you remember that I asked you what your phone number was?

Mr. Carver: Yes.

Mr. Laskey: Didn't he insist that you take the three dollars? Wasn't he insistent because it was outlawed?

Mr. Ottenberg: I wouldn't say he was really in-
100 sistent, but he rather seemed to want me to take it.

* * * * *

Mr. Ottenberg: You said somebody in Partridge's office told you to get in touch with me. Do you know which one?

Mr. Carver: It was one of their attorneys, I don't know which one, and then I talked to your office and it must have been you personally because I gave you the amount of the judgment, and you said you thought seventy-five dollars would be the proper amount.

Mr. Ottenberg: That never happened.

Mr. Laskey: That wasn't the conversation of the last few days? That was a year ago?

Mr. Carver: That was a year ago.

101 Mr. Jones: Mr. Carver, I asked you about the judgment and you said it was something to which you had an equitable defense because it was a unilateral lease, signed by only one party.

Mr. Carver: Yes.

Mr. Jones: Who signed the lease? Did you sign it?

Mr. Carver: The original lease was never produced.

Mr. Jones: And you said it had been only signed by one party?

Mr. Carver: Yes, sir.

Mr. Jones: Who had signed it?

Mr. Carver: I had signed, but the other side had not.

Mr. Jones: You are positive of that?

Mr. Carver: Yes.

Mr. Canfield: Did you ever deny your signature to that lease?

Mr. Carver: No, sir, I stated in my pleadings that the lease was not signed, and that brought up the point who did, and Mr. Stafford here said they didn't like equitable defenses.

Mr. Jones: Did you sign a statement in that case that you hadn't signed the lease?

Mr. Carver: No, I said it wasn't signed, but I didn't say who it wasn't signed by.

Mr. Merrick: Who prepared that?

Mr. Carver: I prepared it on the advice of counsel.

Mr. Merrick: Who was your attorney?

Mr. Carver: I didn't have counsel, but one of the
102 law college professors told me what to put in, and so did Judge Cobb.

The Chairman: Who was the college professor?

Mr. Carver: Professor Dorsey at the Washington College of Law.

* * * * *

Daniel Partridge III appeared before the committee and the following occurred:

The Chairman: Now, will you inquire of Mr. Partridge, Mr. Canfield?

Examination by Mr. Canfield

Q. Mr. Partridge, at any time have you been attorney for Higby-Richardson—Higby, Richardson and Franklin?
A. I have.

Q. Were you their attorney eight or nine years ago when they had a case pending in Municipal Court against Milton Carver for an amount of money?

* * * * *

A. (Referring to papers) It was seven years ago.

Q. Do you have with you some papers dealing with a landlord and tenant action against Mr. Carver? A. I have.

Q. Will you produce those papers? A. (The wit-
103 ness produced papers.)

Q. Now, tell us in your own way what you know about that case. This is purely an informal hearing. A. This was a suit for three months' rent on a lease for a period after Mr. Carver had moved out of the property. An affidavit of defense was filed by Mr. Carver in which he stated that the lease had not been signed by the plaintiff, Higby, Richardson and Franklin.

* * * * *

104 Mr. Merrick: Does that affidavit show by whom it was signed?

Is that your signature?

Mr. Carver: It is my signature.

Mr. Merrick: It has a notarial seal on it but no signature of a notary public. Oh, yes, I see.

By Mr. Canfield:

Q. Now, did that case come on for a hearing? First, what preliminary steps were taken? A. I got a motion for judgment notwithstanding the affidavit of defense, and during the course of the argument on that motion I stated to the Court that the affidavit was false; I believe that I stated the affidavit was perjured because I had the lease in my possession and it was signed by both parties. That motion was overruled.

* * * * *

105 There was another affidavit of defense filed, too, and during the course of the argument before the judge, it was Judge Cobb, according to my best recollection, I did make that statement; thereafter the case came on for trial.

* * * * *

106 When the case came on for trial I brought my witnesses down, and Mr. Carver appeared on the morning of trial, and there were other cases ahead of it,

and when the case finally came on for trial later on in the day Mr. Carver didn't appear, and I took ex parte proof.

* * * * *

Q. Did you prove execution and delivery of the lease?

A. Yes.

Q. Did the witness testify that the lease was duly executed when it was delivered to Mr. Carver? A. Yes, Mr. Franklin of Higby, Richardson and Franklin.

Thereafter I received a letter from the Grievance Committee to the effect that a complaint had been made against me, which included a copy of the letter purporting to be on the letterhead of Mr. Milton G. Carver. I have a copy of that letter here.

* * * * *

A. This appears to be a carbon copy on the letterhead of Mr. M. G. Carver, Solicitor of Patents, 1835 K Street, Northwest, Washington, D. C., and above the words I just read, on the left, associated with C. P. Olmstead, mechanical engineer, and on the right, phone National 2630, 107 and dated October 12, 1933, entitled "Mr. Frank H.

Myers, Secretary of the Grievance Committee of the Bar Association, 723 Fifteenth Street, Northwest, Washington, D. C.

* * * * *

Q. Now, do you have a copy of the lease in your possession? A. I have what I believe to be a copy of the lease. I believe that should be the original of the lease (indicating).

* * * * *

108 Q. Did anything come of that grievance complaint?

Was there a hearing before the subcommittee? A. No, sir, I wrote a letter in reply, a carbon of which I have in the file.

* * * * *

Q. Now, you took a judgment on that suit, did you not?

A. Yes, sir.

Q. Has the judgment ever been paid? A. I have never received payment; I don't know but I have never received payment thereon, or received word from anyone that it has been paid.

* * * * *

110 By the Chairman:

Q. Did he ever make any effort to pay this judgment or any part of it? A. Not so far as I know, Colonel.

Q. He never called upon you with reference to it at all? A. No, sir, I don't remember it, and I believe I would have remembered it if he had called, I am sure I would have remembered it if he had called.

The Chairman: Mr. Merrick, have you any questions?

By Mr. Merrick:

Q. Mr. Partridge, can you give us the date the de-
111 fendant in that case vacated the property?

* * * * *

A. The notation in Mr. Creywood's handwriting, "Vacated about 3-31-1933," meaning March 31, 1933; re-rented July 1, 1933; due April 1, 1933, \$50; due May 1, 1933, \$50; due June 1, 1933, \$50, so so far as our records show the suit was apparently for a period during which he had not occupied the premises.

* * * * *

115 Q. When did you file your suit? A. 8-23-33, I have a notation of court costs for filing the suit.

116 Q. What is the date of the judgment? A. In my handwriting is a notation 10-12-33, judgment for plaintiff on ex parte proof for \$150 with interest from June, 1933, to August.

* * * * *

Q. Do you know whether or not Mr. Carver ever communicated with your office with respect to this judgment?

* * * * *

A. I do not. I made inquiry of Mr. Creywood just this afternoon, about five minutes ago, whether he had heard from Mr. Carver in the past year or so and he said no.

* * * * *

117 Q. Higby, Richardson and Franklin didn't communicate with you for any reason to inquire about Mr. Carver? A. They never told me they had received any phone call from Mr. Carver after this judgment had been rendered. I don't remember.

Mr. Merrick: I think that is all, Mr. Partridge.

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118 Mr. Merrick: Mr. Carver asks leave to say one thing in the presence of Mr. Partridge.

* * * * *

The Chairman: Go ahead.

Mr. Carver: When Attorney Partridge thought I committed perjury in my affidavit of defense in which I said the lease wasn't signed, Judge Cobb said to Attorney Partridge, "Let me see the lease."

Attorney Partridge said he had it in his pocket at that time, but he did not see fit to produce it, and Judge Cobb said, "Let me see the lease," and he waited patiently while Attorney Partridge looked all through his papers but he couldn't find the lease, and he started an argument, and Judge Cobb said that he was surprised that he would argue with a layman.

Mr. West: Do you remember that, Mr. Partridge?

Mr. Partridge: I don't remember that. My best recollection is that I had the lease there. Of course, it
119 has been so long ago I may have been mistaken.

The Chairman: Is there anything further you want to say?

Q. Now, you took a judgment on that suit, did you not?
A. Yes, sir.

Q. Has the judgment ever been paid? A. I have never received payment; I don't know but I have never received payment thereon, or received word from anyone that it has been paid.

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111 fendant in that case vacated the property?

* * * * *

A. The notation in Mr. Creywood's handwriting, "Vacated about 3-31-1933," meaning March 31, 1933; re-rented July 1, 1933; due April 1, 1933, \$50; due May 1, 1933, \$50; due June 1, 1933, \$50, so so far as our records show the suit was apparently for a period during which he had not occupied the premises.

* * * * *

115 Q. When did you file your suit? A. 8-23-33, I have a notation of court costs for filing the suit.

116 Q. What is the date of the judgment? A. In my handwriting is a notation 10-12-33, judgment for plaintiff on ex parte proof for \$150 with interest from June, 1933, to August.

* * * * *

Q. Do you know whether or not Mr. Carver ever communicated with your office with respect to this judgment?

* * * * *

A. I do not. I made inquiry of Mr. Creywood just this afternoon, about five minutes ago, whether he had heard from Mr. Carver in the past year or so and he said no.

* * * * *

117 Q. Higby, Richardson and Franklin didn't communicate with you for any reason to inquire about Mr. Carver? A. They never told me they had received any phone call from Mr. Carver after this judgment had been rendered. I don't remember.

Mr. Merrick: I think that is all, Mr. Partridge.

* * * * *

118 Mr. Merrick: Mr. Carver asks leave to say one thing in the presence of Mr. Partridge.

* * * * *

The Chairman: Go ahead.

Mr. Carver: When Attorney Partridge thought I committed perjury in my affidavit of defense in which I said the lease wasn't signed, Judge Cobb said to Attorney Partridge, "Let me see the lease."

Attorney Partridge said he had it in his pocket at that time, but he did not see fit to produce it, and Judge Cobb said, "Let me see the lease," and he waited patiently while Attorney Partridge looked all through his papers but he couldn't find the lease, and he started an argument, and Judge Cobb said that he was surprised that he would argue with a layman.

Mr. West: Do you remember that, Mr. Partridge?

Mr. Partridge: I don't remember that. My best recollection is that I had the lease there. Of course, it
119 has been so long ago I may have been mistaken.

The Chairman: Is there anything further you want to say?

Mr. Merrick: Have you anything further Mr. Carver?

Mr. Carver: Only I might say after the perjury matter came up I talked to Doctor Dorsey about drawing up the papers, and he said there was no perjury.

Mr. Laskey: Mr. Carver, when you made that affidavit that the lease wasn't signed, didn't you make it on the copy you had yourself?

Mr. Carver: Yes, sir, and I showed that lease to Attorney Partridge, and showed him it wasn't signed.

Mr. Laskey: Did you ever make any effort to find out if the original lease which went back to Higby, Richardson and Franklin had been signed by them?

Mr. Carver: Only to the extent that I was in court when Judge Cobb called on Attorney Partridge to produce that lease and he couldn't, and now it comes up today.

Mr. Laskey: You were there the day the case was to be tried?

Mr. Carver: Yes, sir.

Mr. Laskey: And you knew that there were other cases going on, and this case was to follow those?

Mr. Carver: Our case was always about last and that is the reason there was delay. Attorney Partridge used to go up and put it on the bottom.

Mr. Laskey: On the day it was to be heard you were there in the morning?

Mr. Carver: And then he would get a postpone-
120 ment on the ground that he had another case in another court.

Mr. Laskey: But you understood it was to come up that day if it could be reached, but you didn't wait to see if it was reached or not?

Mr. Carver: Yes, sir, I think the docket will show quite a number of postponements that were not mine. There was a postponement and the Court said, "Twenty-five cents," and Attorney Partridge paid it, and it wasn't mine.

Mr. Laskey: I understood you to say you were there the day the case was to be disposed of, but not at the time it was disposed of?

Mr. Carver: That is right.

Mr. Laskey: You heard Mr. Partridge say the case was on hearing, and other matters were taken up?

Mr. Carver: Yes.

Mr. Laskey: And it was some time before the case was tried?

Mr. Carver: Yes.

Mr. Laskey: And you didn't appear when it was called, and he put on ex parte evidence?

Mr. Carver: I appeared at ten o'clock and it was set for two-thirty, the last case.

Mr. Laskey: And you didn't come back?

Mr. Carver: No, sir.

Mr. Laskey: Why not?

Mr. Carver: I figured this was off when Attorney Partridge couldn't produce the lease when Judge Cobb called on him for it, that it would be dismissed. I figured if he couldn't produce it the first time that he couldn't produce it the second, but it seems to appear here he did.

Mr. Laskey: You heard Attorney Partridge say he produced the lease the day of the trial?

Mr. Carver: He did not.

Mr. Laskey: You weren't there.

Mr. Carver: I was there, and Judge Cobb transferred it to another docket.

Mr. Laskey: That wasn't the day of the trial.

Mr. Carver: No, there were supposed to be two dates; Judge Cobb called on him to produce the lease and he couldn't, and then he transferred it to another court.

Mr. Merrick: Do you remember that, Dan, about Judge Cobb transferring it to another calendar or trial court?

Mr. Partridge: No, I don't. It was tried before Judge Aukam.

Mr. Stafford: Isn't that what happened, that Judge Cobb sent it to Judge Aukam when he found it wasn't going to be reached?

Mr. Carver: I don't remember.

Mr. Canfield: Are you now contending, by direct contention or inference, that Mr. Franklin attached his signature to the lease after it was produced in court?

Mr. Carver: It could have happened.

Mr. Canfield: No, not that it could have happened, but is that what you are saying?

Mr. Carver: No, sir, I am going further than that. I lived in that building seven or eight years and signed several leases, and it appears that this lease that was brought in wasn't the lease that was filed on. They probably
122 could have gotten another one filed, but there were seventeen people sued about that time.

Mr. Canfield: Isn't this the lease that the suit was brought on?

Mr. Merrick: You would have to have the affidavit and the bill of particulars to determine that. I assume it is. You don't have the bill of particulars?

Mr. Carver: I don't remember it.

Mr. Canfield: This appears to be a lease for a year dated August, 1932, and runs to September, 1933; that is the lease that was sued on, wasn't it?

Mr. Carver: It might have been.

Mr. Canfield: Well, do you deny that that is the lease?

Mr. Merrick: No, he doesn't deny it.

Mr. Carver: I don't deny it, I just say it was a unilateral lease, that the signature of the agent of the apartment house was necessary, because it had this mutual covenant in the lease.

Mr. Canfield: That is all.

The Chairman: Mr. Partridge, are you willing to let us keep this letter?

Mr. Partridge: Yes. I would like to make rebuttal of one thing if I may, that Mr. Carver is very much mistaken when he said I slipped anything on the bottom.

Mr. Merrick: He didn't say that.

Mr. Partridge: He did say that, he said I took the dockets and put them on the bottom of the pile.

I have never done anything like that so he must have been mistaken.

123 Mr. Carver: I wanted this suit tried, and Mr. Partridge said, "It will come up pretty soon," and he put it down on the bottom and the clerk said nothing. I was standing right there.

Mr. Partridge: Sometimes at Municipal Court we get the jacket from the clerk, but every time he has put it back in the place from whence it came.

The Chairman: Now, have we heard all the evidence, Mr. Merrick, you wish to submit?

Mr. Merrick: Mr. Carver, have you anything further now to offer? I want to be sure.

* * * * *

Mr. Merrick: Will you answer that question, Mr. Carver? Do you now wish to submit anything further in the way of a statement or any further evidence of that character?

The Chairman: Now, think very carefully, Mr. Carver, because when you were in here last time you were asked that specific question and you said you had nothing further to submit, and we would like to have the record show now whether you have or haven't anything further to submit.

Mr. Merrick: Finally and conclusively.

That is all, Colonel.

The Chairman: All right, we will advise you.

Mr. Merrick: Yes; thank you very much.

(Thereupon the instant hearing was concluded.)

* * * * *

130 Enrollment & Disbarment Committee

February 10, 1938.

Hearing before the Enrollment and Disbarment Committee of The United States Patent Office, held February

10, 1938, at 2 p. m. in Room 3 Department of Commerce Building, Washington, D. C.

Present:

Mr. Leslie Frazer
Mr. J. A. Brearley
Mr. Armstrong
Mr. W. W. Cochran
Mr. Landers
Mr. R. F. Whitehead
M. G. Carver in person.

Petition of M. G. Carver for admission to practice in Trade-Mark cases. All questions by Commissioner Frazer unless otherwise indicated.

Frazer: We are here to consider your petition and will be glad to hear anything you have to tell us. I might qualify that, we don't want to hear anything about matters involved in the orders to show cause on which you were excluded.

Carver: Mr. Frazer, if those prior charges are not to be whitewashed or some disposition made of them, how am I to be given recognition to handle Trade-Mark cases at present? This hearing will be futile if you are going to exclude me on the basis of the old charges.

131 Frazer: That is not necessarily true. Assuming the charges to be true, as we must, on which you were excluded from practice it may be that your conduct since that time has been such as to indicate reform on your part and on your qualifications you may be permitted to practice before the office. You were granted a hearing on the order to show cause, the order of exclusion was made by the Commissioner; the order was confirmed by the court and that is the termination of that. We don't want to hear anything about it. You also filed one petition for reinstatement, it was heard by the committee, during that hearing you were permitted to go into the merits of the

disbarment and the committee recommended that your petition be denied, now you come again on a petition for recognition to practice in Trade-Mark cases and that is what we want to hear you about.

Carver: Mr. Chairman, are any members of your board not lawyers?

Frazer: I am not here to answer questions. I am here to ask them.

Carver: I think if I knew that before I entered upon an argument of my case I would be able to determine whether I am talking to laymen or lawyers and I would present my case differently.

132 Frazer: You may assume that the majority of members are members of the bar.

Carver: Dr. Hostettler said to make a showing, to come in here and ask to be given recognition to practice Trade-Mark cases before the Patent Office and I might say that so far as the use of my letter head goes I have had no letter heads printed for four or five years and I would like to ask the consent of the board to just refer to the old charges against me as a matter of law not as a matter of equity, for the purpose of construing what is gross misconduct within the limits of the Indeterminate Sentences Act in the District in regard to felonies.

Frazer: How long since you used your last letter heads.

Carver: Not in four or five years maybe six.

Frazer: You are referring to the letterheads on which you had "solicitor of patents".

Carver: I have not placed an order for letterheads in four or five years.

Frazer: How long since you used any of those.

Carver: I am unable to state definitely but it is a matter of years I am pretty sure.

Frazer: Two or three years.

Carver: I guess I have not used any in three years.—It is a period of years—I have really forgotten—three years probably—I never had any printed after I was

133 denied admission to handle Trade-Mark cases. I gave up all idea of soliciting any business.

Frazer: You did not have any printed after the expulsion order in September 1931.

Carver: Yes I did—but I brought that out at the last hearing and since I had the last hearing I have never had any letter heads printed in fact between 1931 and the last hearing there was probably an intervening period of two years that I never had any letter heads printed.

Frazer: You used a number of them after your petition was denied.

Carver: In general correspondence to private persons; I just have to plead a general denial and I rely on the constitutional rights against self incrimination—all I can plead is a general denial to that question.

Frazer: You won't deny you wrote that letter will you (indicating).

Carver: August 28, 1935. That is my letter and that was after, no, that was before I had the hearing. That was brought out at the previous hearing.

Frazer: Your hearing was on April 24, 1934.

Carver: That was the original hearing. But the one after that—I stated a few minutes ago that there was a period of 3 or 4 years that is August 1935, it is pretty near 4 years ago so I stated—it is August 1935—

Whitehead: That is less than three years—it won't be three years until next August.

Frazer: It won't make so much difference—go ahead.

134 Carver: I might state that when I had my other hearing I stated that I would confine my activities to search work for non resident patent attorneys. I have made no attempt to handle Trade-Mark cases before the Patent Office and associate work is not unethical—that is my answer to that question of the letter. May I get permission from the board to discuss the difference between gross misconduct and the indeterminate sentences act of

the District of Columbia. I was excluded about 5 years ago on the charge of gross misconduct, under the Indeterminate Sentences Act of the District of Columbia if a man is convicted of a felony and he is sentenced to five or six years, after he has served two-thirds of his sentence he is paroled. In my case I have been excluded for five years that is grossly excessive, when you think of gross misconduct as contrasted with a felony. Gross misconduct is not even set down as a misdemeanor and under the Indeterminate Sentences Act on felony they give him a parole after two-thirds of his sentence. I have never had parole, and have been excluded for five years in Trade-Mark practice. That is excessive.

Frazer: You were not excluded as a matter of punishment, you were excluded for the protection of the public. We want you to show us that it is safe for the public and to the public to let you continue your practice.

Carver: I might state that since I had the last hearing before this board I graduated from law school and
 135 that law course included a course on legal ethics and whether or not I am entitled to be given recognition to practice Trade-Marks before the Patent Office I just wanted to get the matter off the record as far as being entitled to practice is concerned because I am employed now, I am breaking in as a shorthand reporter in one of the District Courts and I expect to return to Connecticut and practice law there and I don't expect to handle Trade-Mark cases but I would like to get the matter cleaned up on the books so there is no reason why I should not be given the privilege of handling Trade-Mark cases if one should arise. I might state that having sent out a great deal of letters soliciting business there is bound to be a few cases in which old customers will write and I would like to state that all these letters and cases that have come to my attention I have just turned them over to a registered attorney in the city and made no attempt to handle them and I think this is a sufficient showing to justify my reinstatement to

handle Trade-Mark cases. I think this is all the representation I can make at this time. I will be very glad to answer any of your questions.

Frazer: Any questions.

Brearley: You say that you made no attempt to handle cases before the Patent Office since your last hearing. (No answer given.)

Brearley: Did I understand you to say that you made no attempt to handle cases before the Patent Office
136 since the last hearing on your petition.

Carver: I plead a general denial of that question. If you have any proof that I handled cases—

Brearley (interrupting): I asked a question.

Carver: Under my constitutional rights I am not to incriminate myself—the law—

Frazer (interrupting): You are here to make a showing on your own petition. If you want us to pass intelligently on your petition you should—

Carver (interrupting): All I can plead is a general denial.

Brearley: Then you have not handled any cases.

Carver: That is my answer.

Brearley: Do you mean to deny handling cases?

Carver: I mean at law that it is a defense.

Brearley: I am not asking you about that. Do you mean to deny that you have handled cases since your last hearing.

Carver: I plead a general denial and in law that means I am not guilty of handling cases.

Brearley: Do you mean to say that you did not handle cases since your last hearing.

Carver: That is what my answer would imply.

Brearley: Then, Mr. Carver, do you remember taking a power of attorney from a certain firm in the name of Milton G. Carver, and these powers of attorney were changed to M. Georg Carveri. The man who gave the power of attorney said he signed it made out to Milton G. Carver.

Carver: All I can say there must be a mistake in
 137 that case, because if that occurred it was before the
 hearing I had when I requested reinstatement and
 furthermore under the constitution I have a right to be
 confronted with the witnesses and the papers against me so
 if you have such a paper I would be glad to see it.

Brearley: We have it in the record.

Carver: If such a power did exist it is not my name that
 is on it.

Brearley: Let me ask you this. Were there not a num-
 ber of cases filed here in the name of E. S. Carver in which
 you were concerned in the prosecution.

Carver: Oh, yes, but that was about four years ago.

Brearley: That was since the last hearing. It was since
 then.

Carver: This was before the last hearing and merely a
 power of attorney was filed in these cases and every one was
 cancelled or withdrawn.

Brearley: Later.

Carver: Yes, since they got cause for complaint every
 one was withdrawn.

Brearley: They were not withdrawn until after the in-
 quiry was made and it was found that E. S. Carver was a
 Government employee.

Carver: Yes, but there was no connection between the
 filing of the power in E. S. Carver and the

Brearley (interrupting): Did you handle them.

Carver: Yes, I did the work on them, but that is a long
 time before I had the rehearing. That is water under the
 mill.

Brearley: These are new cases I am speaking about, Mr.

Carver. Did you ever hear of B. S. Woodward.

138 Carver: Yes, he worked with me but quit about
 two years ago.

Brearley: Was there a number of cases that were filed
 with his name as attorney.

Carver: There were three cases at the time he was working for me, but that is not irregular as he was in my employ.

Brearley: You handled these cases since you were excluded from practice.

Carver: Since that last hearing I have not done any of these things. I came in here and made a showing today. I contracted a few minutes ago the difference between Misdemeanors and felonies.

Brearley: We are talking about your conduct before the Patent Office. I put questions to you in regard to handling cases. You made a statement that you had not handled cases since you were excluded from practice but

Carver (interrupting): Since my hearing for reinstatement

Brearley (continuing): And there were two powers of attorney that came in made out to M. G. Carver and in one of the cases the party who signed the power of attorney stated that when they signed it it was for M. G. Carver and when it came in it was to M. Georg Carver. Can you explain that.

Carver: No. My name is M. George Carver and I suggest that if you want it explained you see the party in whose name the power was written. As I said before, if that did occur it must have been about four years ago and the showing I am making today is for the last three and a half or four or five years. Anyway subsequent to the matter you just mentioned.

139 Frazer: Any more questions. That is all, Mr. Carver, unless you have something else.

Carver: Would it be possible to make the decision in my case today.

Frazer: I can't tell you now. We will discuss it in executive session and you will hear from us in regard thereto.

The hearing closed at 3:10. Later Mr. Brearley presented Trade-Mark application 369871 filed August 28, 1935;

Trade-Mark application 363593 filed April 10, 1935; Trade-Mark application 88926, August 22, 1935; Trade-Mark application 72683 July 18, 1935, as evidence, with particular attention called to the alteration of names shown in the powers of attorney.

141 Endorsed: Mail Division Dec 21 1939 U. S. Patent Office

Endorsed: Assistant Commissioner Jan 19 1940 U. S. Patent Office

1830 K Street, N. W.,
Washington, D. C.

December 20, 1939

Board of Enrollments and Disbarments
U. S. Patent Office
Washington, D. C.

(Through Commissioner of Patents)

Gentlemen:

It is respectfully requested that I be given a new hearing concerning my exclusion from trademark practice for the following reasons:

1. The writer has to state that he has entered upon a permanent stenographer position (including shorthand reporting work, which I like to do) and therefore not intending to ever again practice trademark cases, would like the matter of my exclusion cleared up on the Patent Office records since no useful purpose is served by keeping such exclusion order standing against me indefinitely.

2. Mr. Hostetler (formerly on the Board for Enrollments and Disbarments) once stated to make a showing if I wished to obtain reinstatement. Not only have I made this showing by refraining from soliciting any patent or trademark business for many years, but, for the reason set out above, I now feel the Patent Office would doubtless entertain the suggestion that my assurances be accepted that I do not

again propose handling any trademark cases, which would seem to be good and sufficient reason to reopen my case before the Board to the end that a decision may be made thereon favorable to the writer.

3. The Act of Congress passed about two years ago prohibiting unregistered persons from using "solicitor of patents" on letterheads gives the Patent Office sufficient authority to deal with cases of this kind; and since my use of said expression on letterheads was one of the
142 principal reasons for my exclusion, I feel that in view of the existence of the law above mentioned, and what is previously stated, that the Patent Office will now feel justified in withdrawing the exclusion order which is standing against me.

4. It is respectfully submitted that keeping alive the exclusion order referred to, which has already been in force about ten years, would, if kept alive indefinitely, be tantamount to bringing to light against some 60-year-old man seeking a public office a juvenile court delinquency which happened when he was fifteen years old. It is therefore believed that the Board would now be willing to accord a further hearing in my case whereby it may be made the matter of a favorable decision on basis of what is set out herein; and since no harm would be caused the Patent Office by withdrawal of the exclusion order, but, on the contrary, it would allow my name to be cleared on the Patent Office records so that what few years of life remain to the writer might be free from having this old long-standing matter (which happened when I had had no business experience) from the possibility of being brought up in the future from time to time as though it were a new and recent incident; and that it would be most proper for the Board to grant my request for a further hearing its favorable consideration.

Respectfully submitted,

MILTON G. CARVER

140

Department of Commerce
United States Patent Office
Washington

January 22, 1940

Mr. Milton G. Carver,
1830 K Street, N. W.,
Washington, D. C.

Dear Sir:

Your request for a rehearing concerning your exclusion from practice of trade-mark matters before the Patent Office has been considered by the Committee on Enrollment and Disbarment.

As you state no facts which would be likely to result in a change of position on the part of the Committee in the event a rehearing were granted, your request for a rehearing is denied.

Yours very truly,

COMMITTEE ON ENROLLMENT AND
DISBARMENT

By LESLIE FRAZER,
Chairman.